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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Michael Cianci, an individual  
13 Plaintiff,  
14 v.

15 Department of Health and Human Services,  
16 a federal agency, Robert Kennedy, Jr., as  
17 Secretary, Department of Health and  
18 Human Services, McArthur Allen, as an  
19 individual and in his official capacity, and  
20 John and Jane Does, I-VI, individuals and  
21 in their official capacity,  
22 Defendants.

No.

**COMPLAINT**

**(Privacy Act, ADEA,  
Bivens Civil Rights, False  
Claims Act Retaliation,  
OWBPA)**

23 Comes now Plaintiff, who upon information and belief, files his Complaint against  
24 the Department of Health and Human Services (HHS), a federal agency (Privacy Act  
25 claim), against Secretary Robert Kennedy, Jr., HHS, in his official capacity (ADEA  
26 claim), and against defendant McArthur Allen, in his official and individual capacity, and  
27 against Jane and John Does, I-VI, in their official and individual capacity each. Plaintiff  
28 incorporates by reference the component agency's published enacting organizational  
structure attached as Exhibit 1, and alleges as follows:

## BACKGROUND AND GENERAL ALLEGATIONS

1  
2 1. This case involves acts of employment age discrimination, and retaliation, and  
3 retaliation under the False Claims Act, committed by defendants Allen and Does against  
4 Plaintiff, and post-employment discriminatory retaliatory acts perpetrated by defendants  
5 against Plaintiff which are characterized by defendants' fraudulent concealment and  
6 deceptive acts, due process constitutional law violations, and post-employment threats and  
7 harassment. It also includes Plaintiff's claims under the Privacy Act to correct and amend  
8 employment-related records and for damages for the agency's willful and deliberate failure  
9 to accurately maintain those records. Claims for retaliation under the False Claims Act also  
10 relate to Allen's retaliatory acts of placing Plaintiff under investigation and upon  
11 investigative leave, to prevent Plaintiff from requesting an outside agency to review Allen's  
12 fiscal conduct relating to the GSA field office leases and his act terminating parking  
13 privileges. This parking incident was behind Allen's adverse action and was fraudulently  
14 concealed by defendant Allen for over two years to hide his retaliatory conduct from the  
15 Plaintiff.

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20 2. The Department of Health & Human Services (HHS) is the agency responsible  
21 relating to the Privacy Act claims. The Secretary is named and is responsible for the acts  
22 of Allen and Does relating to all acts of age discrimination and retaliation. Defendants  
23 Allen and Does are individually liable for retaliation under the False Claims Act and under  
24 the *Bivens* claim. To the extent defendants' conduct extends to times prior to the date the  
25 prior age discrimination case was settled, August 1, 2023 (CV-22-01568-PHX-SMB), all  
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1 provisions relating to the release of liability for defendants Allen and certain Does, are null  
2 and void because of Allen's and Does' deceptive and fraudulent conduct concealing  
3 material evidence during, before and after, the settlement agreement was executed and  
4 because waivers agreed to by Plaintiff under the Older Workers Benefit Protection Act  
5 (OWBPA), 29 U.S.C. Sec. 626(f), are invalid because defendants violated the OWBPA,  
6 by withholding material evidence, by adding an illegal provision, by providing inadequate  
7 consideration, and by depriving Plaintiff of informed consent.  
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10 3. Defendant McArthur Allen and defendants Jane and John Does are currently  
11 employed or were employed at all relevant times in some capacity by the HHS, a federal  
12 agency. Defendant Allen at all relevant times was an administrative law judge (ALJ) and  
13 later chief ALJ for the Office of Medicare Hearings and Appeals (OMHA), which is part  
14 of HHS, being appointed chief judge for the agency on November 8, 2020.  
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16 4. The component agency supports ALJs who hear and adjudicate Medicare appeal  
17 cases. OMHA has 11 field offices, a records center in Cleveland, Ohio and a headquarters  
18 office located in Arlington, Virginia. OMHA has no field office in Baltimore, Maryland,  
19 nor does it conduct mission functions in Baltimore, Maryland, other than receiving cases  
20 from that State. All OMHA cases are processed through the Cleveland, Ohio records center  
21 and randomly assigned to field offices, and hearings are mostly conducted by VCT or  
22 telephone.  
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25 5. For the past three years OMHA has been in a self-imposed hiring freeze and has  
26 taken both legitimate and questionable action to reduce its size. This includes offering  
27 buyouts to employees, detailing employees to other agencies, and career counseling. Some  
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1 questionable tactics have included denying reasonable medical work accommodation  
2 requests for medically qualified employees to encourage retirement, and other  
3 discriminatory tactics, punitively interfering with and cancelling previously approved  
4 budgetary resources, and doubling employees' duties. Defendant Allen's act of terminating  
5 parking privileges for judges at field offices was an example of punitive acts deployed to  
6 reduce the force.  
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9 6. Plaintiff was an ALJ with the OMHA and was serving as an Associate Chief  
10 Administrative Law Judge (ACALJ), the Chief Judge for the Phoenix Field Office. Plaintiff  
11 retired on September 30, 2022. Plaintiff filed an age discrimination employment lawsuit  
12 against the HHS Secretary, then Secretary Xavier Becerra. (First Lawsuit; CV-22-01568-  
13 SMB-PHX). Age discriminatory employment acts suffered by Plaintiff included being the  
14 only applicant for the vacant chief judge position in November 2020, who was not initially  
15 interviewed for the position, despite being deemed fully qualified by the agency's Human  
16 Resources Division. The Plaintiff was approximately 10-24 years older than all applicants  
17 selected for interview. Not being selected for the initial interview deprived Plaintiff the  
18 opportunity to meet with the Secretary and precluded his consideration. The OMHA  
19 attempted to conceal that discriminatory act. Additionally, Plaintiff had been disqualified  
20 from an earlier ALJ hiring selection process because he complained to agency diversity  
21 officials OMHA did not select for interview any Hispanic descent applicants for ALJ  
22 positions at the Phoenix Field Office. None out of the initial 32 applicants selected for  
23 interview for the Phoenix Office, and the OMHA refused to interview two highly qualified  
24 Hispanic descent applicants recommended by Plaintiff. Since that time the agency has  
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1 committed numerous retaliatory, hostile, and discriminatory acts against Plaintiff which  
2 are described in the previous complaint and herein because of Plaintiff's disclosure. (CV-  
3 22-01568-PHX-SMB, Doc. 1).

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5 7. The other primary discrete discriminatory act against Plaintiff named in the First  
6 Lawsuit is when Plaintiff was placed under investigation by defendant Allen on June 8,  
7 2022, and then placed on investigative leave, on or about June 21, 2022. The notification  
8 letters mailed to Plaintiff informing him of the allegation cited to support the investigation,  
9 signed by defendant Allen, contained a vague allegation which inferred Plaintiff had  
10 committed misconduct by violating OMHA policy which impeded the duties of a  
11 subordinate employee, his hearing office director. That position is akin to an office  
12 manager and is a management position. The allegation lacked specific information but  
13 because it alleged (unnamed) violations of agency rules, instructions, policies, and  
14 delegations, the allegation portrayed a serious breach of agency standards of conduct,  
15 which Allen used to place Plaintiff on investigative leave. On or about December 10, 2024,  
16 in the Second Privacy Act/FOIA lawsuit filed by Plaintiff (CV-24-00417-TUC-RM, Doc.  
17 17), the agency admitted the notice letters were false, inaccurate, and incomplete, by  
18 disclosing the real reason for the investigation related to only management acts, which are  
19 not defined as employment misconduct under agency regulations and instructions. That  
20 was the first time the agency officially acknowledged the investigation was based upon  
21 Plaintiff's managerial acts and not misconduct and did not involve violations of policy and  
22 rules.  
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25 8. The agency governing employment instructions, HHS Instruction 752, and agency  
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1 regulations, 45 C.F.R. Part 73, require some threshold evidence of misconduct to conduct  
2 an adverse employment inquiry. If evidence of serious or criminal misconduct exists,  
3 formal investigations are to be conducted by the agency's Office of Inspector General  
4 (OIG). Plaintiff retired on September 30, 2022, after defendant Allen refused to provide  
5 any specific information about the allegation raised against him. Allen also denied  
6 Plaintiff's request for OIG to conduct the formal investigation pursuant to the agency  
7 instruction. Allen conducted Plaintiff's formal investigation in-house and against agency  
8 policy so he could control it. Plaintiff filed his lawsuit prior to retiring. The age  
9 discrimination case was settled by Secretary Becerra and Plaintiff on August 1, 2023. The  
10 Plaintiff thereafter learned through the later Privacy Act request and lawsuit, Allen  
11 concealed material evidence from Plaintiff during the litigation and settlement proceedings  
12 to wit: Allen concealed the real purported reason for the investigation, related to only  
13 managerial duties naming only one managerial act, that the Plaintiff attempted to pay for  
14 his judges' parking privileges at the Phoenix Field office. Providing that material evidence  
15 would have significantly strengthened Plaintiff's age discrimination case and would have  
16 established the investigation was conducted without any evidence of misconduct.

21 9. On May 3, 2024, Plaintiff filed a request to amend and correct certain records  
22 relating to Plaintiff's investigation, notably the vague June 8 & 21, 2022, notification letters  
23 mailed to Plaintiff from defendant Allen, and a request to access the closed investigation  
24 records, pursuant to the Privacy Act, 5 U.S.C. Sec. 552a, which the agency did not timely  
25 respond to. Upon receiving no substantive response relating to two access requests over a  
26 period of almost two years, from the agency (November 22, 2022 and May 3, 2024),  
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1 Plaintiff filed a lawsuit against the HHS, under both the Freedom of Information Act, 5  
2 U.S.C. Sec. 552, for certain property lease records located at 333 Cassell Drive, Baltimore,  
3 Maryland, and under the Privacy Act, 5 U.S.C. 552a, for access to his closed investigation  
4 records and to correct his records.  
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6 10. This second lawsuit was filed on August 22, 2024 (Second Lawsuit, CV-24-00417-  
7 TUC-RM). In the second lawsuit, as indicated, the agency disclosed that defendant Allen  
8 had based Plaintiff's investigation upon a false pretense and had failed to provide the  
9 Plaintiff with actual notice of the real reason for placing him under investigation. The  
10 disclosure by the agency that there was another specific reason for the investigation, not  
11 officially disclosed previously, which involved managerial acts and not misconduct, and  
12 naming only the parking situation as an example, establishes that the vague notice provided  
13 by Allen on June 8, 2022, was false, not accurate and incomplete. The prior notice was  
14 intended to mislead Plaintiff, and it did.  
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17 11. Plaintiff was at one point informally informed by an agency senior leader during the  
18 investigation that Plaintiff's conduct to request information from the General Services  
19 Administration (GSA) relating to parking privileges for his judges was discussed by Allen  
20 and certain Does and emphasized that Allen was likely to use and delay the administrative  
21 investigation to encourage Plaintiff to retire. This was never confirmed to be the allegation  
22 to be investigated, by Allen, the agency, or the two initial employees Allen appointed to  
23 conduct the investigation. In fact, Allen denied Plaintiff's request for more specific  
24 information, and an appointed investigator informed Plaintiff the only allegation to be  
25 investigated was the vague allegation described in Allen's June 8, 2022, letter. Allen  
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1 therefore deliberately concealed the reason for the investigation, and intentionally deprived  
2 Plaintiff of actual due process notice. Moreover, in potential violation of Rule 11, the  
3 government denied the relevance of the parking situation and expressly denied managerial  
4 acts had anything to do with the investigation, in its Answer in the First lawsuit. (CV-22-  
5 01568-PHX-SMB, Doc. 27). Plaintiff became officially aware of the purported “real”  
6 reason for the investigation when the agency finally disclosed it on December 10, 2024, in  
7 the Second Lawsuit. (CV-24-00417-TUC-RM, Doc. 17). In support of the False Claims  
8 Act retaliation claim, in Count 5, recent production of records from the agency in the  
9 Second Lawsuit establishes Allen became aware Plaintiff was going to report Allen’s  
10 conduct terminating parking privileges to an outside agency to review, as Plaintiff was  
11 required to do under federal regulations. Federal regulations prohibit supervisors from  
12 performing retaliatory action against employees for whistleblower type conduct. 5 C.F.R.  
13 Part 752. Allen concealed his conduct to protect himself.

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18 12. After stalling Plaintiff’s correction and access request, the agency denied Plaintiff’s  
19 correction of records request on August 20, 2024, and on appeal on October 3, 2024, falsely  
20 responding that the June 2022, notice of allegation letters were complete and accurate.  
21 Plaintiff’s correction request sought to amend the notice letter records with a statement to  
22 establish Plaintiff had broad office management authority and supervisory authority over  
23 the hearing office director position and was in response to the vague notice contained in  
24 the initial June 2022 notice letters, since at the time defendant agency had not disclosed  
25 Allen’s false notice. Recently, Plaintiff discovered HHS attorney Brian Pflaum provided  
26 Allen with advice relating to the contents of the June 8, 2022, letter, and had also later  
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1 advised agency officials relating to the denial of Plaintiff's request to correct records  
2 (August-October 2024). Allen manipulated Plaintiff's lawful post-employment request  
3 with support from an agency employee who assisted Allen with concealing the purported  
4 real reason for the investigation.  
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6 13. The agency eventually produced some 920 pages of records on or about December  
7 5, 2024, and January 17, 2025, in response to the Second Lawsuit, some of which were  
8 responsive to Plaintiff's access request and litigation demand. Plaintiff then voluntarily  
9 moved to dismiss the Second Lawsuit access claims without prejudice which the Court  
10 accepted. Plaintiff determined the agency's admission of providing false notice and some  
11 of the 920 pages of records satisfied his access inquiry to know how the investigation was  
12 initiated and conducted, confirming for Plaintiff the investigation was corrupt.  
13 Additionally, relating to the access request, Plaintiff viewed the agency's lack of response  
14 and candor, and its conduct of casting a wide net identifying over 19,000 "potential"  
15 records to be new discriminatory and hostile and retaliatory acts intentionally perpetrated  
16 in bad faith to conceal Allen's conduct. Those acts and others constitute post-employment  
17 retaliation and harassment. The Plaintiff has re-filed his Privacy Act claim and others  
18 because of the continued post-employment retaliation by Allen.  
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23 14. The "new reason" to justify the investigation provided by the agency recited only  
24 managerial decisions and did not involve employment misconduct. Specifically, the agency  
25 cited Plaintiff's efforts to attempt to contact another federal agency for information relating  
26 to parking privileges at the Phoenix Field Office as the primary reason to have initiated a  
27 formal employment investigation against Plaintiff, accusing Plaintiff of attempting to  
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1 circumvent that decision. Plaintiff's conduct consisted of attempting to find out from the  
2 Phoenix office's property agent, the GSA, whether he could pay out of pocket for a few  
3 parking spaces after Allen directed the termination of judges' parking privileges at all field  
4 offices. Establishing this new reason is a pretext to discrimination and/or retaliation,  
5 Plaintiff had advised his supervisor, the Deputy Chief ALJ at the time of his act of  
6 contacting GSA, who condoned his conduct. Allen knew Plaintiff did not commit  
7 misconduct relating to the parking situation, and that there was no reason to investigate  
8 him.  
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11 15. Plaintiff would not have settled the First Lawsuit on the terms agreed to in the age  
12 discrimination case, had he known the now purported official and real reason for the  
13 investigation offered by the agency. The Plaintiff would not have even retired had he  
14 known the real reason for the investigation was the parking situation. Plaintiff's negotiation  
15 position, and consequently the settlement agreement itself, was impeded by defendant  
16 Allen's false and misleading statements and his concealment of the purported real reason  
17 for the investigation. Allen concealed material evidence that would have significantly  
18 strengthened Plaintiff's case, and which would have established Allen's conduct was a pre-  
19 text for discrimination and retaliation.  
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23 16. The concealment of material evidence from Plaintiff by defendant Allen and by  
24 Does also deprived Plaintiff of due process adequate notice and impacted on his  
25 opportunity to be heard and defend against the investigation. In federal administrative  
26 investigations, some notice of specificity of alleged acts, dates, and legal authority is  
27 required. Wherever legal rights are impacted, even informal proceedings and  
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1 investigations, due process notice is required. It is a fundamental tenet of Constitutional  
2 Law. *Amos Treat v. Securities and Exchange Commission*, 306 F.2d 260 (D.C. Cir. 1962).  
3 Investigations by federal agencies must be conducted in good faith and not for reasons such  
4 as humiliation, political purposes, harassment, or bad faith. *Pennington v. Donovan*, 574  
5 F. Supp. 708 (S.D. Tex.).

7 17. Defendant Allen, on or about January 2025, in an agency EEO decision was found  
8 by HHS to have discriminated against another former Phoenix judge based upon her  
9 disability, by denying her reasonable medical accommodation. The agency decision  
10 determined defendant Allen had constructively discharged the Judge and ordered her  
11 reinstatement with full back pay and compensatory damages. It also ordered defendant  
12 Allen to attend remedial EEO training, and for formal notice that Allen committed  
13 discrimination to be posted within the agency. Defendant Allen has a pattern of  
14 discriminating against employees and has been obsessed with reducing the OMHA work  
15 force. That judge is 67years old. Federal case law allows discrimination findings against  
16 other employees to be admitted as evidence in discrimination cases.

20 18. Under the OMHA's enacting legislation and organizational structure, management  
21 judges, in particular field office chief judges, have broad management and discretionary  
22 authority and are the focal leadership point for completing the OMHA's mission.  
23 (Complaint Ex. 1). The OMHA failed to follow this legally mandated structure in recent  
24 years by illegally limiting management judge authority, without Secretarial approval, and  
25 by placing more authority under administrative officers called hearing office directors  
26 (HODs). The agency allowed HODs to interfere in hearing process functions and to impede  
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1 judicial independence, in violation of the enacting organizational structure.

2 19. Contrary to the organizational structure, the HODs were placed under the  
3 supervision of Ms. Karen Ames, who serves as the OMHA Director of Operations and  
4 Program Integrity since 2015, and who assisted defendant Allen in the investigation of  
5 Plaintiff. Ms. Ames has been provided with a second office space at 333 Cassell Drive,  
6 Baltimore, Maryland, address, which was the subject of Plaintiff's May 3, 2024, FOIA  
7 request for property records. OMHA employee Daniel Kahane worked for Ms. Ames and  
8 was put in charge of overseeing Plaintiff's investigation. It is believed that Mr. Kahane has  
9 been allowed to work from Tampa, Florida, where he resides, and did not have to report  
10 back to OMHA headquarters after the pandemic, like other employees. The OMHA  
11 Program Integrity Division is not defined nor authorized in the enacting legislation or  
12 organizational structure and duplicates other HHS offices which handle labor relations  
13 functions.

14 20. Plaintiff accelerated his retirement because of the investigation and because  
15 defendant Allen refused to provide specific notice of the allegation, despite Plaintiff and  
16 his attorney requesting that information. The Plaintiff was informed that the vague  
17 allegation notice was standard practice for the Program Integrity Division. Historically, the  
18 Program Integrity Division had investigated several management judges when they tried  
19 to reclaim authority, or follow the legally mandated enacting organizational structure, or  
20 for any action the Program Integrity Division did not like. This included a former Deputy  
21 Chief ALJ and an assistant to the former Chief ALJ over a dispute relating to interpersonal  
22 communications. It is widely known throughout the OMHA that the OMHA Program  
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1 Integrity Division proposed a 90-day suspension against one HQ management employee  
2 to coerce her into retiring. Using coercive tactics has been the modus operandi for the  
3 OMHA Program Integrity Division, which has regularly used formal investigations it could  
4 control in violation of HHS policy. (HHS Instruction 752).  
5

6 21. Plaintiff and then Secretary Becerra settled the First Lawsuit on August 1, 2023.  
7 The settlement agreement contained provisions that stated no adverse findings from the  
8 investigation were made against Plaintiff and that no entry relating to the investigation  
9 would be made in Plaintiff's official personnel files. The agreement also provided the  
10 closed investigation records were located on the OMHA IT server and consisted of witness  
11 statements and other related documents accumulated in the investigation. The settlement  
12 agreement stated the agency would keep the investigation records in a secured location  
13 within the HHS Office of General Counsel. At no time did agency officials or Allen  
14 officially inform Plaintiff of the real purported reason for the investigation prior to  
15 execution of the settlement agreement, and not until December 10, 2024.  
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19 22. In the settlement agreement defendant Becerra recited that it was the agency's  
20 position that it conducted its investigation of Plaintiff in good faith. Neither the Secretary,  
21 nor any of his delegates, nor the signatory for the Secretary on the settlement agreement  
22 and release, or other agency employee or agency representing attorney, officially informed  
23 Plaintiff of the false nature of the allegation notice he had received from defendant Allen,  
24 nor that the purported real reason for the investigation was the parking situation and other  
25 (unnamed) managerial decisions. No other managerial act has ever been noticed or  
26 disclosed by the agency, Allen, or Does, not even in any initial disclosure statement in two  
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1 lawsuits. As indicated, the government went so far as to formally deny managerial acts  
2 were the reason for the investigation in its previous Answer. (CV-22-01568-PHX-SMB,  
3 Doc.27). This pattern of concealing material evidence and by manipulating the legal  
4 process constitutes post-employment harassment and retaliation.  
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6 23. Moreover, the agency has engaged in additional age discrimination and retaliation  
7 by not fulfilling its responsibility under the settlement agreement, post-employment, and  
8 by committing other retaliatory acts. In the Privacy Act lawsuit, contrary to the express  
9 terms in the agreement, the agency claimed the “no findings” provision was because  
10 Plaintiff retired, falsely inferring it had accumulated evidence of misconduct committed by  
11 Plaintiff. Moreover, the agency stalled Plaintiff’s request for access to records indicating  
12 the closed investigation records were scattered amongst more than 19,000 documents  
13 throughout the agency. The disclosed 920 pages of the produced records established the  
14 agency cast a wide net relating to events within the Phoenix Field office completely  
15 outside the scope of the request and responded with records which spanned over several  
16 years before the investigation, intentionally attempting to be non-responsive to the access  
17 request.  
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19 24. Of the 920 pages of records Plaintiff received from the agency pursuant to his access  
20 request for the closed investigation records, only about 100 were responsive. Most of the  
21 records produced were related to numerous management decisions which occurred years  
22 before the investigation and most involved unrelated matters including the Plaintiff’s  
23 supervision of a low producing employee and another staff judge, who had numerous  
24 serious complaints raised against her by her legal assistant, which Plaintiff was not fully  
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1 privy or involved with at the time. The response confirmed for Plaintiff that Ms. Ames and  
2 the Program Integrity Division keep dossiers on its management judges without providing  
3 Privacy Act notice, and beyond record retention destruction deadlines. Moreover, the  
4 agency knowingly and wrongfully designated certain confidential settlement related  
5 discussions and draft agreements at the administrative investigation stage as public  
6 information releasable under FOIA, in a threatening manner to intimidate, retaliate against,  
7 and harass Plaintiff, post-employment. Federal case law holds such acts, threats, and  
8 harassment are considered post-employment discrimination and retaliation and constitutes  
9 new adverse action.

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12 25. The settlement agreement release expressly excludes acts which occur after the date  
13 of execution of the settlement agreement, which is required by the OWBPA, part of the  
14 Age Discrimination Employment Act (ADEA), 29 U.S.C. Sec. 621, Sec. 633a, Sec. 626(f),  
15 *et al.* The OWBPA is intended to prevent retaliation and future discrimination. Federal  
16 and Arizona law provides that settlement agreements and releases which are based upon  
17 deception, overreach, fraud or misrepresentation, may be voided by the aggrieved party.  
18 The Plaintiff was not officially made aware of the false notice until about December 10,  
19 2024, during the Privacy Act Second Lawsuit, wherein it was disclosed in a judicial  
20 admission by defendant agency, HHS.

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24 26. The release from liability in the previous settlement agreement is not enforceable  
25 because defendant Allen committed deceptive, misleading, and fraudulent acts and  
26 omissions by providing false notice of the allegation to Plaintiff and he further concealed  
27 the purported real reason for the investigation. The false notice allegation letters were  
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1 central and material to the administrative investigation and age discrimination claims raised  
2 in the First Lawsuit, and in adopting the settlement agreement and the release. Defendant  
3 Allen signed false statements on at least two occasions which he mailed across State lines  
4 to Plaintiff, in violation of federal law. These false letters were first sent to Plaintiff on June  
5 8, 2022, and then on June 21, 2022, and others through September 2022 by defendant Allen  
6 or by the Deputy Chief Administrative Law Judge, Jonathon Eliot, on behalf of defendant  
7 Allen, extending the investigative leave.  
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10 27. Defendant Allen, as assisted by defendants Does, drafted, signed, mailed, and  
11 provided false notice of the allegation to Plaintiff, which included mailing the false  
12 statements by United Parcel Service, UPS, to Plaintiff, in Pima County, Arizona. The  
13 investigation was initiated by defendant Allen, under false pretense. Defendant Allen  
14 concealed the false nature of the allegation notice and concealed the real purported  
15 reason(s) for the investigation through December 10, 2024. The Plaintiff received no due  
16 process notice relating to the parking situation or any of the other unnamed managerial  
17 decisions the agency claimed supported the investigation. The Plaintiff's attorney for the  
18 administrative investigation received only the false notice. Witnesses during the  
19 investigation did not receive notice of the real reason for the investigation.  
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23 28. The wrongful acts and omissions and age discrimination and retaliation extended  
24 beyond the date of the execution of the settlement agreement and release. The concealed  
25 information was material evidence and was not disclosed during the investigation or during  
26 the age discrimination, First Lawsuit. The denial of Plaintiff's correction request by agency  
27 officials occurred after the date of the execution of the settlement agreement and release  
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1 (May 2024-October 2024). The HHS attorney and investigator who provided  
2 recommendations for Allen to provide inaccurate and incomplete information in the June  
3 8, 2022, notice letter, also advised agency privacy officers to deny Plaintiff's correction of  
4 records request. Plaintiff was discriminated and retaliated against and denied an  
5 independent review. Plaintiff complied with EEO procedures when he became aware of  
6 Allen's conduct concealing material information, and filed his new age discrimination  
7 claim with the agency on January 8, 2025. Allen had a conflicted employee, Ms. Ames,  
8 who was involved in the investigation and head of the OMHA Program Integrity Division,  
9 acted as the deciding official to deny any attempt to resolve Plaintiff's informal EEO  
10 complaint. The Plaintiff was again denied an independent review and discriminated against  
11 and retaliated against post-employment. These acts constitute further post-employment  
12 harassment, discrimination and retaliation, and adverse action.

16 29. Defendant Allen had a duty to disclose the purported real reason for the  
17 investigation to the Plaintiff. Allen was the agency approval authority to initiate an  
18 investigation and any proposed adverse action, and therefore had a legal, constitutional,  
19 regulatory and ethical obligation to provide Plaintiff with due process of law and provide  
20 an accurate and complete description of the allegation to support the investigation. At the  
21 very least, Allen had a duty NOT to mislead Plaintiff. Defendant Allen had a confidential  
22 relationship as that term is defined by law, with Plaintiff as a supervisor and manager with  
23 overall responsibility over the agency, the investigation, and agency ethical obligations,  
24 and a duty to reveal the false statements he made to the Plaintiff under federal regulations,  
25 including HHS Instruction 752 (disciplinary employment process), 5 C.F.R. Sec. 2635.101  
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1 *et al.* (basic obligations of all federal employees) and 45 C.F.R. Part 73, *et al.*, (HHS  
2 standards of conduct). Allen is required by federal regulations to follow the Constitution  
3 and federal laws and has a heightened ethics obligation as the head of the OMHA. 5 C.F.R.  
4 Sec. 2635.101(11) & (14); 5 C.F.R. Sec. 2638.103 (ethical obligations). Under Federal  
5 Court rules, F.R.Civ.P. 26(a)(1), OMHA had a duty to disclose relevant information to  
6 Plaintiff in an initial disclosure statement, in two lawsuits. It did not.  
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9 30. Plaintiff signed the age discrimination settlement agreement on June 10, 2023. The  
10 Secretary's initial disclosure statement in the First Lawsuit was due on or before June 5,  
11 2023. No official notice of the real purported reason for the investigation was provided to  
12 Plaintiff, prior to his signing the settlement release. Making false statements and concealing  
13 material evidence is not within the lawful scope and duty of the chief ALJ position. Allen  
14 is not entitled to qualified immunity.  
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16 31. Certain defendant Does committed acts to assist defendant Allen in misleading and  
17 concealing this material evidence by committing certain acts or omissions. Does concealed  
18 the real reason for the investigation during the entire 4 months Plaintiff was under  
19 investigation and during the entire age discrimination litigation, and thereafter. Plaintiff  
20 was informed by the investigators appointed by defendant Allen to conduct the  
21 investigation, that the scope of the investigation involved only that vague allegation  
22 contained in defendant Allen's June 8, 2022 "false" notice letter. Does advised Allen  
23 relating to the investigation including recommending the contents of the June 8, 2022,  
24 notice letter, and denying Plaintiff and his attorney more specific information relating to  
25 the allegation.  
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1 32. There are three relevant time periods: One, the period from June 8, 2022, the date  
2 Plaintiff received the first false, misleading, and incomplete notice of allegation letter and  
3 placed upon administrative and investigative leave, through September 30, 2022, the date  
4 Plaintiff retired. Two, the period after September 30, 2022, through August 1, 2023, the  
5 date Plaintiff and Secretary Becerra entered into the settlement agreement of the previous  
6 age discrimination lawsuit. Three, the period from after August 1, 2023, through December  
7 10, 2024, the date the HHS admitted in the Second Lawsuit, the notice of allegation letters  
8 provided to Plaintiff from defendant Allen, were false, inaccurate and/or incomplete and  
9 misleading. Additionally, Allen and Does, continued to conceal their past conduct and  
10 committed further acts of age discrimination and retaliation by harassing Plaintiff and  
11 interfering with the agency's EEO informal process, even after December 10, 2024, after  
12 Plaintiff administratively filed his January 8, 2025, new EEO claim with the agency. This  
13 consisted of appointing conflicted employee, Karen Ames, as the agency official tasked to  
14 determine if the agency would resolve the Plaintiff's new EEO claim at the informal level  
15 and attorney Brian Pflaum being appointed to advise HHS privacy officers to deny  
16 Plaintiff's claim for correction. Both constitute further adverse actions and post-  
17 employment retaliation.  
18

19 33. Defendant Allen's fraudulent conduct includes the false notice letters he signed and  
20 mailed to Plaintiff across State lines, his acts of concealing the false notice, and concealing  
21 the real reason for the investigation, and his act of concealing material evidence from  
22 Plaintiff during the First Lawsuit and afterwards. Plaintiff was not a federal employee  
23 during periods two and three and had no personnel relationship with defendant Allen or  
24  
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28

1 Does, after period one. Allen had a continuing duty to disclose false statements since it  
2 continued to negatively impact Plaintiff, which included the agency maintaining inaccurate  
3 information in the closed investigation records, which impacted and harmed Plaintiff's  
4 employment and economic opportunities.  
5

6 34. Under 18 U.S.C. Sec. 1001, false statements and concealing false statements are  
7 separately and criminally actionable. 18 U.S.C. 1341, prohibits sending false statements  
8 through the mail to accomplish any fraudulent scheme or purpose, which definition of mail  
9 includes UPS and other commercial delivery services, which Allen used.  
10

11 35. Both the June 8, 2022, and June 21, 2022, notice of allegation letters falsely,  
12 inaccurately, and incompletely stated Plaintiff was being investigated for the following  
13 allegation:  
14

15 **“due to complaints that your actions as the Associate Chief Administrative Law**  
16 **Judge (ACALJ) of the Phoenix Field Office have violated the Office of**  
17 **Medicare Hearings and Appeals’ (OMHA’s) delegations of authority (e.g., with**  
18 **respect to the lines of authority established in OMHA’s organizational chart**  
19 **and in other policies/rules/instructions) and interfered with the functions of**  
20 **OMHA’s operations and the Phoenix Hearing Office Directors (HOD),**  
21 **resulting in a negative and disruptive work environment.”**

22 36. The false notice led Plaintiff to believe the investigation was based upon the  
23 OMHA’s historical deviations from the enacting organizational structure and misled  
24 Plaintiff and impaired Plaintiff’s ability to defend against the investigation. Allen directed  
25 two appointed investigators, Judges Tim Stewart and Laruen Tran, to use this vague false  
26 notice to conduct its investigation. The Plaintiff received notice on June 9, 2022, from  
27 appointed investigator Judge Stewart that the notice of the allegation he had received from  
28 defendant Allen was the entire subject matter and scope of the investigation. Upon

1 information and belief, some of the appointed investigators who took witness statements  
2 during the investigation have made statements on the record that the investigation was void  
3 of any substance and that the evidence they accumulated resulted in no adverse findings  
4 against Plaintiff, or words to that effect. One investigator described the investigation as  
5 “BS.”  
6

7 37. The Plaintiff requested more specific information relating to the letter dated June  
8 8, 2022, from Allen including as to what delegations and policies he allegedly violated,  
9 and what acts he allegedly committed, as well as how his conduct allegedly impeded the  
10 duties of his hearing office director who was a subordinate to Plaintiff. That request was  
11 denied by defendant Allen. Plaintiff’s supervisor, then acting Deputy Chief Judge Jonathon  
12 Eliot, informed Plaintiff of defendant Allen’s denial in late September 2022, approximately  
13 one week before Plaintiff’s scheduled investigative interview. The Plaintiff also requested  
14 the HHS Office of Inspector General to conduct any investigation, which is standard  
15 agency procedure according to an authoritative agency employment instruction, HHS  
16 Instruction 752, but defendant Allen further denied that request. Had the investigation been  
17 elevated to OIG, Plaintiff would have received adequate due process notice and process  
18 protections as required by HHS regulations.  
19

20 38. On or about December 10, 2024, in the joint report for case management  
21 recommendations, filed with the Court in the Privacy Act lawsuit (Second Lawsuit, CV-  
22 24-00417-TUC-RM, Doc. 17) the HHS admitted the allegation against Plaintiff to support  
23 an investigation was something entirely different restating that the investigation against  
24 Plaintiff was initiated because he allegedly: **“attempted to circumvent OMHA’s senior**  
25  
26  
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28

1 **leadership’s decision to terminate paid parking privileges at the Phoenix Field Office**  
2 **and other (unnamed) management reasons.”** The two notices cannot be reconciled, and  
3 defendant Secretary in the previous age discrimination case had previously denied  
4 managerial acts were the reason for the investigation. (Cv22-01568-PHX-SMB, Doc. 27).

5  
6 39. The investigation was therefore NOT initiated because of potential employment  
7 misconduct, for violating organizational structure, or for impeding his hearing office  
8 directors’ duties, or for violating delegations, rules, instructions, or policies, which were  
9 never named. The parking situation involved Plaintiff’s free and protected speech,  
10 consistent within the scope of his legally authorized management duties, to attempt to  
11 contact GSA officials, who managed the field office and parking lot, to determine whether  
12 he could legally pay out of pocket for a few parking spaces for his judges to share, after  
13 Allen ordered the termination of parking privileges, despite it being a contracted budgetary  
14 approved item, and provided for and covered in the GSA field office building lease.  
15

16  
17 40. Parking was a safety issue at the Phoenix Federal Building because ALJs have been  
18 targeted in the past by disgruntled claimants, and after two known assaults at Phoenix  
19 Federal buildings. Plaintiff had broad and discretionary management authority to act for  
20 the welfare of his employees under the enacting organizational structure. (Complaint Ex.  
21 1). Plaintiff had timely briefed his supervisor about his intent to contact GSA, Deputy Chief  
22 Judge Jonathon Eliot, who supported and condoned the effort, and offered to help Plaintiff.  
23 The Plaintiff was never ordered to not contact GSA. Plaintiff was later informed by Judge  
24 Eliot that OMHA employee Ms. Ames wanted the meeting with GSA cancelled, which  
25 Plaintiff promptly complied with. The Plaintiff requested to discuss the parking situation  
26  
27  
28

1 with defendant Allen, but that meeting was never arranged.

2 41. The parking situation drew attention to an arrangement defendant Allen had  
3 approved on behalf of Ms. Ames, which secured a second office for her near her home, the  
4 333 Cassell Drive, Baltimore, Maryland, office building, so she would not have to  
5 commute to OMHA headquarters every day in Arlington, Virginia. This employment  
6 preference was brought up for discussion at a senior leadership meeting by the Plaintiff.  
7 Office morale suffered because employees believed parking was terminated to pay for Ms.  
8 Ames' second office. Pursuant to 5 C.F.R. Sec. 2635.101(6), (8), (9), (11), & (14), Allen  
9 had a duty not to grant employment preferences, to use government property only for  
10 mission needs and not invalid purposes, and to report fraud, waste, and abuse, and  
11 corruption, not to participate in it.  
12  
13  
14

15 42. On June 7, 2022, Plaintiff informed his supervisor, Judge Eliot, that he had serious  
16 concerns about Judge Allen's conduct of interfering with and terminating an approved item  
17 in the OMHA budget and GSA lease, and about a possible employment preference for Ms.  
18 Ames. The Plaintiff informed Judge Eliot he was going to contact an outside agency to  
19 review defendant Allen's recent fiscal conduct. The Plaintiff was placed under  
20 investigation the next day by defendant Allen. Documentation of correspondence relating  
21 to those communications was produced in response to Plaintiff's Privacy Act request  
22 establishing agency officials and Allen were aware of Plaintiff's intent to participate in  
23 whistleblower protected activity.  
24  
25  
26

27 43. HHS Instruction 752 directs employment disciplinary inquiries and requires the  
28 HHS Office of Inspector General (OIG) to conduct formal investigations, if necessary, and

1 only upon evidence of some serious misconduct. Otherwise, employment inquiries are to  
2 be made by supervisors informally, not formal investigation. The Instruction lists sample  
3 areas and items of misconduct. Moreover, 45 C.F.R. Part 73 contains the agency's  
4 standards of conduct, which also lists and defines misconduct, and provides guidance and  
5 regulatory duties. Seeking information from another federal agency is not misconduct  
6 under the instruction or regulations, nor other federal regulations.  
7

8  
9 44. Managerial decisions are also not listed as misconduct under HHS instructions and  
10 regulations and OMHA has a separate policy that directs management disputes are to be  
11 resolved informally and in-house, at OMHA AP 2019-2 and AP 2022-3, which defendant  
12 Allen failed to comply with. The Plaintiff had a protected free speech right to contact  
13 another federal agency for information related to agency practices and for the welfare of  
14 his employees. The agency is required to follow its regulations, instructions, and policies.  
15 Plaintiff could have and would have successfully defended against the purported real  
16 reason for the investigation involving the parking situation. Concealing Allen's conduct  
17 gave the agency an advantage in settlement discussions as disclosure would have been  
18 strong evidence of Allen's discriminatory conduct.  
19

20  
21 45. The agency denied Plaintiff's May 3, 2024, request for correction of records on  
22 August 20, 2024, and upon appeal, on October 3, 2024. Plaintiff's correction request  
23 statement sought to complete and make more accurate the nature of the investigation and  
24 described Plaintiff's authority and duty to follow the enacting organizational structure.  
25 Since Plaintiff was not yet aware that defendant Allen had falsified the notice of allegation  
26 he provided Plaintiff, Plaintiff addressed what he thought was the delegation and policy  
27  
28



1 issue relating to management judge authority, set forth in the broad false June 2022 notice  
2 letters. The proposed correction process is set forth under the Privacy Act, at 5 U.S.C. Sec.  
3 552a (d)(2)-(5).  
4

5 46. The amending statement submitted by Plaintiff read as follows:

6 “The OMHA’s organizational structure was adopted in the agency’s enacting  
7 legislation and is published in the Federal Register and reported to the public and  
8 Congress, at Chapter AK to MMA, Part A, Ch. AA, Sec. AA.10, Pub. L 108-173  
9 (2003), United States, Health Human Services, “Statement of Organizational  
10 Structure.” 70 Fed. Reg. 120 (June 23, 2005) and 76 Fed. Reg. 69 (April 11, 2011).  
11 It provides that Associate Chief Administrative Law Judges (ACALJs) for OMHA  
12 Field Offices, have full authority to lead, guide, direct and manage all staff and that  
13 hearing office directors (HODs) positions, are limited to providing administrative  
14 support, are subordinates to and report to the ACALJs position, and are expressly  
15 prohibited from interfering with or participating in hearing process functions. For  
16 several years the agency, without approval from the Secretary, deviated from the  
17 enacting organizational structure by attempting to vest HODs with authority over  
18 hearing process functions. The ACALJ position is responsible for all hearing  
19 process functions within field offices and has authority to intercede with HOD  
20 duties when necessary for the welfare of employees, to maintain the integrity of  
21 hearing process functions, and to accomplish the mission. Judge Cianci maintains  
22 that he properly followed the legally enacted organizational structure to the extent  
23 practicable at all times. Judge Cianci filed a lawsuit in Federal Court against  
24 Secretary Xavier Becerra, in his official capacity as head of the Department of  
25 Health & Human Services (HHS), for age discrimination pursuant to 29 C.F.R. Sec.  
26 633a. (CV2022-01568-SMB-PHX), arising from the investigation. The lawsuit was  
27 equitably settled between Secretary Becerra and Judge Cianci on or about August  
28 1, 2023. Pursuant to the terms of the settlement, a copy of the settlement agreement  
is to be placed with any investigation records maintained by the HHS, pending  
destruction in accordance with records retention rules. The settlement agreement  
provides that no adverse findings were made against Judge Cianci and that his  
official personnel records did not contain any references to the investigation. The  
settlement also paid Judge Cianci suitable damages.”

47. Plaintiff was not yet aware defendant Allen had provided false notice, nor of Allen’s  
extensive efforts to conceal his conduct, including concealing the real purported reason for  
the investigation. The Plaintiff would have demanded reinstatement in settlement

1 discussions had he known the real reason for the investigation. Moreover, after being  
2 denied a formal records correction by the agency, Plaintiff requested the denied correction  
3 statement be added to his closed investigation records as a statement of disagreement. This  
4 is a right under the Privacy Act and defendant Allen, through HHS attorney Brian Pflaum,  
5 indicated to Plaintiff on or about October 3, 2024, he attached the statement of  
6 disagreement with the June 8, 2022, notice letter to the closed investigation records.  
7 Establishing the agency deliberately stalled Plaintiff's lawful request for records, which  
8 constitutes harassment, discrimination, and retaliation, Pflaum was readily able to access  
9 the closed investigation records at OGC without searching through 19,000 records.

10 48. The statement of disagreement has less legal effect and significance than the agency  
11 formally correcting the records and acknowledging the inaccuracy in the records. Since the  
12 purported new reason for the investigation was not known to Plaintiff at the time the  
13 statement of disagreement was filed, the statement of disagreement is largely insignificant  
14 and of no value to Plaintiff since it does not address the purported real reason for the  
15 investigation. Pflaum admits he advised Allen relating to the contents of the June 8, 2022,  
16 notice letter to agency EEO counselor E. Jones in a February 2025 interview. Neither  
17 defendant Allen nor Mr. Pflaum informed Plaintiff in October 2024, or at any other time,  
18 that the June 8, 2022, notice of allegation letter was false, inaccurate, or incomplete, or the  
19 real reason for the investigation related to the parking situation.

20 49. The agency's admission in the joint report constitutes judicial admission and is  
21 binding upon the defendant agency, Secretary Kennedy, and defendants Allen and Does.  
22 Defendant Allen further admitted to Ms. Jones in his interview he did not notify Plaintiff  
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1 that the real reason for the investigation was the parking situation. More acts of  
2 misrepresentation and concealment which establishes post-employment harassment,  
3 discrimination, and retaliation, include the denial of Plaintiff's request to correct his  
4 records, by Principal Deputy General Counsel Rachel Park, on or about August 20, 2024,  
5 and Deputy Chief Privacy Act Officer William Holzerland, on or about October 3, 2024,  
6 on the basis the records were accurate. Two months later the agency admitted in its  
7  
8 December 10, 2024, judicial admission that the June 2022 letters were not accurate.  
9

10 50. The release of liability provision contained in the previous age discrimination  
11 settlement agreement, relating to defendant Allen and defendant Does, violates the  
12 OWBPA and was based upon deception, overreach, fraud and misrepresentation and  
13 Federal and Arizona case law dictates it is unenforceable. *X-Cel Sales LLC v. A.A. Smith*  
14 *Corporation*, 2012 WL 273693 (D. Ariz. 2012); *Dansby v. Buck*, 92 Ariz. 1 (1962); and,  
15 *Living Designs, Inc. v. Plant Exchange, Inc.*, 431 F. 3d353 (9<sup>th</sup> Cir. 2005). Courts generally  
16  
17 look to the State law to review releases and settlements, and Arizona has long held fraud,  
18 deception, and misrepresentation are grounds to void a release and/or settlement. The  
19 release is null and void. Here, Federal case law has ruled that the Older Workers Benefit  
20 Protection Act (OWBPA) prohibits fraud and deception and requires knowing and  
21 informed waivers. Informed consent is required.  
22  
23

24 51. Plaintiff's decision to retire and then settle his previous age discrimination claim  
25 was based upon deceptive, fraudulent, and misrepresented statements, which statements  
26 and acts by Allen were material, and which were concealed from Plaintiff by defendants  
27 Allen and Does, and who concealed the real reason for the investigation. Under the  
28

1 OWBPA Plaintiff retains the benefit of the bargain originally signed but is allowed to  
2 pursue additional damages and relief because of defendants' violations of the OWBPA.  
3 Reinstatement to his former position is warranted here with full back pay. Plaintiff may  
4 litigate all his ADEA claims and is not barred by the release. The release is null and void.

5  
6 52. The remedy for reinstatement should have been addressed in the settlement  
7 agreement, and would have been, had Allen and Does not acted to conceal material  
8 evidence since the new reason purported by the agency did not constitute employment  
9 misconduct, and the agency falsely took the position that its investigation had been  
10 conducted in good faith. Denying basic due process notice is not good faith. Moreover,  
11 the Secretary would have been under an obligation to reinstate Plaintiff and to have taken  
12 disciplinary action against defendant Allen for his fraudulent and discriminatory conduct,  
13 pursuant to agency and federal regulations. 5 C.F.R. Sec. 752.101, *et al.* (retaliation by  
14 supervisors' provisions). Disclosing the real reason for the investigation would have  
15 provided Plaintiff the opportunity to seek this redress from the Secretary.

16  
17  
18  
19 53. By not officially revealing the false nature of the allegation notice and the real  
20 reason for the investigation, Allen created a false aura of serious misconduct which he used  
21 to support placing Plaintiff upon investigative leave, and post-employment retaliation he  
22 ensured the agency continued to maintain inaccurate and incomplete records, which has  
23 negatively impacted Plaintiff.

## 24 THE PARTIES

25  
26  
27 54. Plaintiff incorporates by reference all preceding paragraphs alleged herein.

28 55. Plaintiff is the former Phoenix Field Office Chief Administrative Law Judge for the

1 Office of Medicare Hearings and Appeals and served in that capacity for four years, having  
2 retired on or about September 30, 2022, accelerating retirement because of the  
3 investigation. He was an ALJ for three agencies for 21 years. He is a retired military reserve  
4 officer and had 36 years of serving with the federal government at retirement. The Plaintiff  
5 is a resident of Arizona, with residence and domicile in Pima County.  
6

7 56. The HHS is a federal agency located at 200 Independence Ave., S.W., Washington,  
8 D. C. 20201. The agency is the properly named defendant in a Privacy Act lawsuit pursuant  
9 to 5 U.S.C. Sec. 552a(g).  
10

11 57. Robert Kennedy, Jr. is the Secretary of HHS, and is the properly named defendant  
12 in an ADEA case pursuant to 29 U.S.C. Sec. 621 and Sec. 633a, *et al.*  
13

14 58. Defendant Allen is a resident of Virginia and serves as OMHA's Chief ALJ with  
15 his office and headquarters in Arlington, Virginia. Defendant Allen is being sued in his  
16 individual capacity and official capacity. Defendant Allen's conduct herein while  
17 purporting to be within his duties was in large portion performed outside his official scope  
18 of lawful duties, and he discriminated against Plaintiff because of age, committed  
19 constitutional torts and retaliated against Plaintiff, and committed potentially criminal  
20 conduct, which includes violations of 18 U.S.C. Sec. 1001 and Sec. 1341.  
21

22 59. Defendant Does are fictitious names of individuals who are believed to have  
23 committed wrongful acts and omissions against Plaintiff by concealing material evidence,  
24 and who have assisted and aided and abetted defendant Allen relating to adopting and  
25 providing false notice of the allegation to Plaintiff and for other acts concealing the  
26 purported "real" reason for the investigation, and who concealed material evidence from  
27  
28

1 Plaintiff. This includes having knowledge and committing acts and omissions to conceal  
 2 such actions by Allen, and that Allen retaliated against Plaintiff under the False Claims Act  
 3 and the ADEA.

#### 4 **JURISDICTION AND VENUE**

5  
 6 60. Plaintiff incorporates by reference all the preceding paragraphs alleged herein.

7 61. This Court has jurisdiction over subject matter pursuant to 28 U.S.C. Sec. 1331  
 8 (Federal and Constitutional law questions) and pursuant to the Privacy Act, at 5 U.S.C.  
 9 Sec. 552a (d) 1-5 & (g), including (g)(1)(A),(C)&(D), *et al.* Jurisdiction is established  
 10 under the Age Discrimination in Employment Act, pursuant to 29 U.S.C. Sec. 621, 633a,  
 11 *et al.*, and under the Older Workers Benefit Protection Act pursuant to 29 U.S.C. Sec.  
 12 626(c) & (f). Jurisdiction is also established pursuant to the whistleblower retaliatory  
 13 provisions in the False Claims Act, 31 U.S.C. Sec. 3729, *et al.* Jurisdiction is further  
 14 established under the Due Process Clause in the Fifth Amendment, and Equal Protection,  
 15 under the equal protection component of the Due Process Clause, under the Fifth  
 16 Amendment; pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of*  
 17 *Narcotics*, 403 U.S. 388 (1971) and *Davis v. Passman*, 442 U.S. 228 (1979), and 28 U.S.C.  
 18 Sec. 1343 (Civil Rights Violations), 28 U.S.C. Sec. 2201, authorizes declaratory relief and  
 19 judgment. Ancillary and supplemental jurisdiction and state and federal common law  
 20 supports all claims founded in evidence of fraudulent misrepresentation and concealment  
 21 to the extent necessary to establish an independent jurisdictional basis. 28 U.S.C. Sec.  
 22 1367. Venue is established pursuant to 28 U.S.C. Sec. 1391(b)(2) & (e)(1)(C), and LRCiv  
 23 77.1.  
 24  
 25  
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1 62. Defendant Allen and defendant Does have committed substantial acts, impacts,  
2 harm, and omissions, to occur in the State of Arizona, and in particular Pima County. The  
3 age discrimination acts and impacts, and harm took place in Pima, County, Arizona.  
4 Defendant Allen served Plaintiff by mail with the false June 8, 2022, and June 21, 2022,  
5 notice of allegation letters, in Pima County, Arizona, thus impacting Plaintiff and initiating  
6 the investigation against him. The settlement agreement from the First Lawsuit was signed  
7 in Arizona. The Plaintiff signed it in Pima County, Arizona. The investigation was largely  
8 conducted in Arizona, and witnesses were interviewed in Arizona. The false statements  
9 were sent using the United States mail process as defined in 18 U.S.C. Sec. 1341, pursuant  
10 to a commercial service, UPS, to Plaintiff's residence in Pima County, Arizona.

11 63. Plaintiff contacted the GSA regarding the parking situation, which the defendant  
12 agency has now admitted was the real reason for the investigation. and attended telephonic  
13 senior leadership management meetings from Pima County, Arizona. Plaintiff further  
14 reported to his supervisor from Pima County, Arizona, he was going to report the OMHA's  
15 improper, fraud, waste, abuse, and corruption type conduct to an outside agency, which  
16 prompted defendant Allen to further retaliate against Plaintiff. The Plaintiff served his  
17 administrative and investigational leave and submitted his retirement papers to the agency  
18 in and from Pima County, Arizona.

19 64. During the 4 months Plaintiff was on investigative leave he was ironically approved  
20 for reasonable accommodation to telework full time from his home in Pima County,  
21 Arizona, due to his hypertensive medical condition, which defendant Allen and his  
22 supervisor, acting Deputy Chief Judge Jonathon Eliot were fully aware of. See *X-Cel Sales*  
23  
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1 *LLC v. A.A. Smith Corporation*, supra, where Judge Murray Snow held that causes of  
2 actions may arise and jurisdiction (and venue) may be established where the impact or  
3 harm from tortious or wrongful type conduct and contract breaches, take place.  
4

### 5 **STATEMENT OF THE CASE**

6 65. Plaintiff incorporates by reference all preceding paragraphs alleged herein.

7 66. All counts in the Complaint are sounded to some degree in fraud in that the evidence  
8 will establish Allen's age discrimination and retaliation, constitutional due process  
9 violations, retaliation under the False Claims Act, and violations of the OWBPA. All  
10 involve acts wherein Allen made false, deceptive, incomplete, and misleading statements  
11 relating to the notice of allegations he provided Plaintiff to justify the investigation and to  
12 place Plaintiff on investigative leave. Allen then fraudulently attempted to conceal the false  
13 nature of the statements and the real purported reason for the investigation. Allen's conduct  
14 is relevant to all counts. His acts of concealing material evidence establish the willful and  
15 deliberate conduct to support Plaintiff's Privacy Act claims. The evidence of fraud is  
16 relevant to any affirmative defense relating to the release of liability relating to the previous  
17 settlement, the OWBPA, and to any defense of qualified immunity. Allen's acts provide  
18 overwhelming evidence to support age discrimination relating to both the ADEA and the  
19 *Bivens* claims and his motivation to retaliate against Plaintiff under the False Claims Act  
20 retaliation provisions.  
21

22 67. To the extent acts occurred prior to the execution date of the prior settlement  
23 agreement, the settlement release is null and void because of Allen's fraudulent conduct  
24 and violations of the OWBPA. The release is further null and void because Allen's conduct  
25  
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28



1 violates the OWBPA protections and his acts of concealing from Plaintiff the real purported  
2 reason precluded Plaintiff from executing a knowing and voluntary waiver to release  
3 liability since Plaintiff did not have informed consent, even without establishing fraudulent  
4 conduct. Other violations of the OWBPA are set forth in Count 6.  
5

6 68. Pleading the fraud and deception with particularity where applicable pursuant to  
7 F.R.Civ.P. 9(b) the elements of fraud are: a representation, which was false, materiality,  
8 defendant knew the representation was false when made, scienter, injured party did not  
9 know of falsity, injured party relied on the representation, injured party had a right to rely  
10 on the representation, and causation and injury. Here, defendant Allen committed certain  
11 fraudulent and deceptive acts, which included as previously indicated: he signed false,  
12 misleading, and incomplete statements for the purpose to mislead Plaintiff and commit a  
13 fraud upon Plaintiff, on at least two occasions, June 8, 2022, and June 21, 2022, which he  
14 mailed to Plaintiff across State lines, informing Plaintiff of false, misleading, and  
15 incomplete notice of the allegation to support an employment investigation, and  
16 fraudulently misrepresented Plaintiff's employment duties, and falsely placed Plaintiff  
17 under investigation and on investigative leave under a false pretense. Allen continued to  
18 fraudulently conceal those acts. Allen never informed Plaintiff of the real purported reason  
19 for the investigation before December 10, 2024.  
20  
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23

24 69. Here, the evidence is fraught with fraud. The false pretense included informing  
25 Plaintiff that Plaintiff was being investigated for allegedly violating unnamed agency  
26 policies, rules, instructions and delegations and for impeding the duties of another  
27 employee, which negatively impacted the operations of the agency, which Allen knew at  
28

1 the time the notice letters he sent to Plaintiff were false and misleading and not complete,  
2 and that the purported reason was not the real reason for placing Plaintiff under  
3 investigation.

4  
5 70. The real purported reason was concealed fraudulently by misrepresentation and  
6 omission and continued to be misrepresented and fraudulently concealed until the agency  
7 made a contrary judicial admission on or about December 10, 2024. The admission  
8 disclosed that Plaintiff was placed under investigation because of his management decision  
9 to contact another federal agency for information about the parking situation at the Phoenix  
10 Field Office, and other never-identified managerial acts. The newly disclosed allegation  
11 claimed Plaintiff attempted to circumvent Allen's decision to terminate parking. Had  
12 Plaintiff been noticed properly he would have participated in the investigation and provided  
13 evidence to rebut the allegation. Extensive evidence was available to rebut that allegation.  
14 Moreover, Plaintiff would not have settled his first lawsuit had he known the real reason  
15 for the investigation. Disclosure during the first litigation would have significantly  
16 strengthened Plaintiff's case. Disciplinary employment inquiries cannot be based upon  
17 discretionary managerial decisions according to agency policy and regulations, without  
18 evidence of actual misconduct. See HHS Instruction 752; 45 C.F.R. Part 73. The fraud  
19 included earlier denials by defendants in pleadings that managerial reasons were not the  
20 basis for conducting the investigation. Those pleadings have never been amended or  
21 corrected by the government. (CV-22-01568-PHX-SMB, Doc. 27).

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26  
27 71. The false allegation was not the real reason for the investigation and which Allen  
28 used as a pretext to place Plaintiff under investigation and on investigative leave, and which

1 purposely inferred a more serious act of employment misconduct, and which Allen knew  
2 at the time to be false, and knowing Plaintiff was not in a position to know or ascertain the  
3 false nature of the statement and that Plaintiff had a right to rely on Allen's representation.  
4 Allen was the approving authority and head of the agency and was privy to Plaintiff's  
5 management decisions. Allen had knowledge of Plaintiff's lawful act to contact an outside  
6 agency for information after Allen's act to terminate paid parking privileges at the Phoenix  
7 office. Defendant Allen sent the false statements through the mail process to Plaintiff's  
8 home in Pima County, Arizona, to investigate Plaintiff under a false pretense. The  
9 representations in the letters were material and contained due process notice of an  
10 allegation to support an investigation in which plaintiff was required to participate, and  
11 which impacted his legal and property rights.

12 72. Defendant Allen was also aware of the parking situation and knew Plaintiff had a  
13 meeting scheduled with GSA officials, which he interfered with, allowing it to be canceled,  
14 to the detriment and welfare of the Phoenix ALJs. The EEO interviews in February 2025,  
15 establish Allen discussed the notice of allegation letters carefully with certain defendants  
16 Does, and Allen decided to provide Plaintiff with a broad and vague, false and misleading  
17 notice of allegation he knew Plaintiff could not defend against, based upon consultation  
18 with Doe Pflaum. The statements contained in the June 8, 2022, letter were material and  
19 intended to deceive and mislead Plaintiff and for Plaintiff to rely on the false notice, and to  
20 impede any defense and to encourage retirement, and/or to constructively have Plaintiff  
21 discharged. The June 8, 2022, letter was designed to be misleading and lack specificity and  
22 cited no act or legal authority, or violation, to support the investigation. The Plaintiff did

1 not officially know of the false nature of the allegation, received no other official notice to  
2 the contrary, and had justification to rely on the false notice allegation letters since  
3 defendant Allen was in his immediate chain of command and his second level supervisor,  
4 and head of the OMHA, and defendant Allen is vested with authority to oversee the OMHA  
5 Program Integrity Division, which led the investigation.  
6

7 73. Defendant Allen placed Plaintiff on investigative leave to support his false statement  
8 that Plaintiff had committed serious misconduct and to remove him from his duties, without  
9 making a factual determination and without legal support, and by denying Plaintiff access  
10 to his duty computer, and office, to ensure Plaintiff would NOT be able to learn the real  
11 reason for the investigation. Allen intended Plaintiff to rely on the false statements, and  
12 Allen had directed Plaintiff that he could not discuss the investigation with other  
13 employees.  
14

15 74. Defendant Allen further acted with intent to misrepresent and deceive Plaintiff, by  
16 committing acts and omissions to conceal the false statements and to conceal the real  
17 reason for the investigation, including advising the agency's Privacy Act officers to deny  
18 Plaintiff's correction requests in May and October 2024, and/or taking action through Does  
19 to deny Plaintiff's correction request, and/or by remaining silent. Allen's intent is further  
20 established because he further misrepresented to the OMHA investigators, Judges Tim  
21 Stewart and Lauren Tran, and later Christine Le who replaced Judge Tran, the real reason  
22 for the investigation, and/or directed them to limit their notice of the allegation and the  
23 investigation into the matters contained only in the false notice allegation letter Allen  
24 issued to Plaintiff on June 8, 2022.  
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1 75. Plaintiff received this additional false notice from Judge Stewart by letter dated June  
2 9, 2022, as Allen had directed. Allen further acted to prevent witnesses from presenting  
3 evidence on Plaintiff's behalf who were interviewed during the investigation, which took  
4 place between June 8, 2022, through September 30, 2022, who were not advised of the real  
5 reason for the investigation. Allen further prevented Plaintiff's attorney during the  
6 administrative investigation, Peter Noone, an opportunity to prepare adequately on behalf  
7 of Plaintiff, by concealing the real reason for the investigation, and by denying his and  
8 Plaintiff's request for more specific information about the allegation and denying  
9 Plaintiff's request to elevate the investigation to the HHS OIG, which division was  
10 responsible for conducting any formal investigation according to agency instructions. By  
11 conducting the investigation himself, Allen was able to control it and preclude due process  
12 notification.

16 76. Defendant Allen on or about June 2023 concealed the false statements further by  
17 acting to prevent disclosure required by court rules by committing acts or omissions to  
18 prevent an adequate initial disclosure statement to be filed during the age discrimination  
19 litigation, thus interfering with judicial process and settlement discussions and processes.  
20 Defendant Allen and defendants Does, further concealed the false statements during all  
21 settlement negotiations during the age discrimination case, including a formal mediation  
22 session before a United States Magistrate Judge, and tainted the settlement agreement and  
23 release by concealing material evidence which he should have disclosed relating to the real  
24 reason for the investigation. Allen had a duty to disclose to Plaintiff under federal and  
25 agency regulations, court disclosure rules, and inherently as he had a confidential  
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1 employment relationship and authority as head of the agency, to oversee the administrative  
2 investigation, and under the Due Process Clause, in the Fifth Amendment. Allen took  
3 further action to deny in the Secretary's Answer to the Complaint in the First Lawsuit, that  
4 managerial decisions had anything to do with the investigation, which was false.  
5

6 77. Defendant Allen and defendants Does, engaged in willful and deliberate conduct  
7 providing Plaintiff with false notice of the allegation used to support an administrative  
8 investigation. Allen and Does committed acts and omissions to misrepresent and conceal  
9 the false notice, and the real reason for the investigation, and violated Plaintiff's rights  
10 under the Privacy Act, by allowing the agency to maintain inaccurate closed investigation  
11 records. This included making adverse determinations against Plaintiff, by recommending  
12 denial of Plaintiff's request to correct the closed investigation records or taking other action  
13 or omission to that effect to agency privacy law officers. Allen continued to perpetuate and  
14 conceal the falsity of the allegation notice letters, by concealing the real reason for the  
15 investigation and not disclosing the false nature of the June 2022 letters, to agency Privacy  
16 Act officials, Park and Holzerland, who were reviewing Plaintiff's correction request.  
17

18 78. Contacting a federal agency for information is not misconduct under HHS  
19 Instruction 752 (disciplinary employment process), 45 C.F.R. Part 73 (HHS standards of  
20 conduct) or 29 C.F.R. Sec. 2635.101 (basic obligations of federal employees), and  
21 constitutes free and protected speech, and such acts were within Plaintiff's authority as a  
22 senior level official and management judge. (Complaint Ex. 1). As head of the OMHA  
23 Allen had knowledge of agency regulations and obligations.  
24

25 79. Plaintiff had full authority under agency regulations and its enacting legislation and  
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1 organizational structure to act for the welfare of the Phoenix Field Office. (Complaint Ex.  
2 1). Plaintiff had informed his direct supervisor of his actions, and his conduct was  
3 condoned and known to proper agency officials, and to Allen. Defendant Allen's actions  
4 were also a pretext to conceal his conduct committing discriminatory, retaliatory, and  
5 hostile acts and omissions against the Plaintiff due to age. Allen's conduct caused Plaintiff  
6 adverse impact and harm as pleaded herein to include but not limited, loss of earnings and  
7 other pecuniary losses including loss of additional retirement benefits, loss of professional  
8 reputation, physical harm, including aggravating Plaintiff's hypertensive medical  
9 condition, incurring out of pocket medical expenses, emotional stress, weight loss, and  
10 anxiety.

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14 80. The Agency's enacting organizational structure governs OMHA's organization,  
15 duties, and responsibilities, and expressly applies to Field offices and HQ personnel. The  
16 OMHA's organizational structure was adopted in the agency's enacting legislation and is  
17 published in the Federal Register and reported to the public and Congress, at Chapter AK  
18 to MMA, Part A, Ch. AA, Sec. AA.10, Pub. L 108-173 (2003), United States, Health  
19 Human Services, "Statement of Organizational Structure." 70 Fed. Reg. 120 (June 23,  
20 2005) and 76 Fed. Reg. 69 (April 11, 2011). It expressly provides field office management  
21 judges like Plaintiff was (ACALJs), have broad and discretionary management authority,  
22 are the head of each field office and have authority to lead, manage, guide, and direct all  
23 staff, and that ACALJs are superior in command structure to the hearing office director  
24 position (HODs). HODs are supposed to report to the ACALJs. It and all amendments have  
25 been published in the Federal Register. (Complaint Ex.1).

1 81. The chief judge's position is expected and required to lead and direct management  
2 judges lawfully and ethically, and to abide by the enacting organizational structure.  
3 Defendant Allen violated the enacting organizational structure and his legal responsibilities  
4 as a federal employee and manager and the HHS standards of conduct to follow and obey  
5 and abide by the Constitution and all federal laws, rules, and ethical regulations, and  
6 violated criminal statutes by making false statements and sending those false statements  
7 through the mail. His conduct was purported to be acting in his official capacity but was  
8 not within the scope of lawful duty, because he engaged in deceptive and illegal conduct  
9 and made false statements and then concealed those statements.  
10

11 82. Defendant Does are believed to be attorneys and investigators, and/or other OMHA  
12 employees who knowingly committed wrongful acts and omissions and who assisted  
13 defendant Allen by recommending the adoption of and then later concealing the false  
14 statements and the real reason for the investigation. Wrongful acts include advising  
15 defendant Allen to deny Plaintiff's request for more specific notice of the allegation and to  
16 deny Plaintiff's request to elevate the investigation to the Office of Inspector General.  
17 Other acts included advising Privacy Act officers to deny Plaintiff's request for records  
18 correction and concealing material evidence and by acts and omissions preventing an initial  
19 disclosure statement with sufficient information about the false statements to NOT be  
20 disclosed in the First Lawsuit. Defendant Allen and defendants Does, further prevented  
21 Plaintiff from calling witnesses and mounting a defense to the real allegation, which could  
22 have been accomplished if the parking incident allegation had been properly noticed.  
23

24 83. Witnesses could have included certain GSA officials who seemed willing to provide  
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1 some parking facilities or take other action to protect the safety of judges at the Phoenix  
2 Field Office. Defendant Does, further committed overt acts of concealing the false  
3 statements from Privacy Act agency officials, and in furtherance of a conspiracy to retaliate  
4 against Plaintiff for attempting to report defendant Allen's conduct of terminating parking  
5 privileges for judges at the Phoenix Field Office, and to prevent Plaintiff from reporting  
6 Allen's questionable fiscal conduct. Other acts include that Does prepared a draft and final  
7 version of the false notice of allegation letters for defendant Allen, and assisted defendant  
8 Allen in carrying out his fraudulent acts through using the United States mail system,  
9 through a commercial carrier service.

12 **Count 1. Privacy Act Amendment Claim, to Amend and Correct Records; 5 U.S.C.**  
13 **Sec. 552 (g)(A), *et al.***

14 84. Plaintiff incorporates by reference all previous paragraphs alleged herein.

15 85. On May 3, 2024, Plaintiff made a request to correct and amend the two June 2022,  
16 notice of allegation letters which relate to Plaintiff, which the agency did not promptly  
17 respond to. The defendant agency eventually denied the correction requests on August 20,  
18 2024, and October 3, 2024, on the basis that the June 8, and 21, 2022 notice of allegation  
19 letters contained correct and accurate information.

22 86. On December 10, 2024, the agency disclosed the purported real reason for the  
23 investigation admitting it was Plaintiff's conduct to attempt to contact GSA for information  
24 as to whether he could pay for parking privileges at the Phoenix Field Office after  
25 defendant Allen terminated parking, and other "unnamed managerial acts." The June 8,  
26 2022, broad and vague notice did not describe the "real" reason for the investigation. The  
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1 parking situation and other unnamed managerial acts did not appear in the notice letter  
2 provided to Plaintiff from Allen. Defendants denied the parking situation and managerial  
3 acts were relevant to the investigation, in its pleadings, in the First Lawsuit, therefore  
4 pleading managerial acts had no application to the investigation. Managerial acts are not  
5 considered to be misconduct under agency instructions and regulations and are not  
6 sufficient reasons to conduct a formal employment disciplinary investigation, nor to place  
7 an employee on investigative leave. The two June 2022 notice letters are inaccurate, unfair,  
8 misleading and incomplete.

9  
10  
11 87. Plaintiff requests the Court order expungement of his name from the closed  
12 investigation records, especially the June 2022, false notice letters and/or order the  
13 following formal correction by amendment to the June 8, 2022, June 9, 2022, and the June  
14 21, 2022, notice of allegation letters, or both, to wit:

15  
16 **The agency (HHS) made a judicial admission in a federal lawsuit filed against it**  
17 **by the Plaintiff (Judge Cianci), on or about December 10, 2024 (CV-24-00417-**  
18 **TUC-RM, Doc. 17), that purported to state a different reason for placing Plaintiff**  
19 **under investigation than was previously given in the June 8, 2022, letter defendant**  
20 **Allen mailed to Plaintiff. The cited new reason related to managerial reasons and**  
21 **not employee misconduct and cited that Plaintiff's conduct of contacting another**  
22 **federal agency, the GSA, for information relating to available options for**  
23 **continuing use of parking spaces at the Phoenix Field Office, for his judges, after**  
24 **Judge Allen terminated parking privileges for what Allen described as budget**  
25 **reasons. In a previous pleading defendant agency inconsistently denied in its**  
26 **Answer that managerial acts were the reason for placing Plaintiff under**  
27 **investigation. (age discrimination lawsuit, CV-22-01568-PHX-SMB, Doc. 27). The**  
28 **June 8, 2022, letter contains inaccurate, unfair, and incomplete information, and**  
**erroneously conveyed an inference that misconduct was involved. The previous**  
**settlement agreement in Plaintiff's earlier age discrimination lawsuit contained a**  
**provision agreed to by both parties that stated the investigation made no findings**  
**adverse to Judge Cianci from the investigation.**

1 88. Allen verbally admitted to agency EEO specialist E. Jones in about February 2025,  
2 the parking situation was related to the investigation. The June 8, 2022, letter signed by  
3 Allen and mailed to Plaintiff across State lines upon Allen's direction did not provide  
4 notice of the parking situation. At no other time did Allen inform Plaintiff that the  
5 parking situation was the real purported reason for the investigation. Plaintiff requests the  
6 expungement of his name from the closed investigation records including from the June  
7 2022 notice letters or other corrective relief deemed just by the Court.  
8  
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10 89. The requested amendment is accurate and verifiable and legally sufficient in  
11 accordance with Federal case law. It does not seek to replace the defendant agency's  
12 judgment but corrects the inaccurate, unfair, and incomplete notice letter defendant Allen  
13 provided Plaintiff.  
14

15 **Count 2. Privacy Act Accuracy Claim. Failure to Maintain Accurate, Fair, and**  
16 **Complete Records and Claim for Damages, and for Other Violations under the**  
17 **Privacy Act; 5 U.S.C. Sec. 552a *et al.*, (552a((g)(1)(C) &(D)).**

18 90. Plaintiff incorporates by reference all previous paragraphs alleged herein.

19 91. On May 3, 2024, Plaintiff made a request to correct and amend the June 2022, notice  
20 of allegation letters which relate to Plaintiff, which the agency did not promptly respond  
21 to. The defendant agency eventually denied the correction request on August 20, 2024, and  
22 October 3, 2024, on the basis that the June 8, and 21, 2022 notice letters contained correct  
23 and accurate information. On December 10, 2024, the agency disclosed the purported real  
24 reason for the investigation was Plaintiff's conduct to attempt to contact GSA for  
25 information as to whether he could pay for parking privileges at the Phoenix Field Office  
26 after defendant Allen terminated parking, and other managerial decisions. Defendant Allen  
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1 used false pretense to justify the investigation. The two June 2022 notice letters are  
2 inaccurate, not fair, and not complete. The agency's conduct, through Allen, was willful  
3 and deliberate. The agency knew inaccurate and incomplete records were being maintained  
4 since it issued the June 8, 2022, notice letter to Plaintiff. The agency admitted the real  
5 reason for the investigation in pleadings on December 10, 2024. The agency has not  
6 corrected those records to date.  
7

8  
9 92. Defendant agency has committed additional Privacy Act violations which are  
10 actionable under 5 U.S.C. Sec. 552a (g)(1)(D) for violating the agency's implementing  
11 regulations pursuant to 45 C.F.R. Part 5b, by allowing the agency to possess and/or  
12 maintain inaccurate records about Plaintiff without providing notice to Plaintiff, and by  
13 violating National Archives Records Administration (NARA) record retention rules,  
14 including General Schedule Rules (GSR) 2.2 and/or 2.3, and threatening the dissemination  
15 and the actual dissemination of confidential, inaccurate and incomplete records, including  
16 confidential settlement discussions, and records which are beyond destruction dates under  
17 NARA schedules and other federal law.  
18

19  
20 93. The acts caused harm to Plaintiff by decreasing his employment opportunities  
21 causing pecuniary loss and impacting on his mental and physical health, including  
22 aggravating his hypertensive medical condition, to which Plaintiff has incurred actual  
23 medical expenses. Plaintiff has been questioned by a prospective client relating to concerns  
24 about the investigation and may not be eligible to apply for certain federal positions, and  
25 less competitive for others. Plaintiff has a need to have the agency formally correct the  
26 closed investigation records to mitigate against future economic losses. Plaintiff faces loss  
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28

1 of prospective legal clients. Federal courts have determined loss of prospective clients and  
2 other potential economic losses constitute sufficient pecuniary loss for the purposes of a  
3 Privacy Act accuracy claim. *Makowski v. United States*, 27 F. Supp. 3d 901 (N.D. Ill.  
4 2014), and other federal case law.

5  
6 94. Defendant agency has willfully and deliberately maintained inaccurate, unfair, and  
7 incomplete information in Plaintiff's closed investigation records by failing to correct the  
8 records to reflect that defendant Allen made inaccurate and/or incomplete statements to  
9 justify the investigation, and by concealing the real reason(s) for the investigation.

10  
11 Defendant agency knowingly and willfully, maintains false and inaccurate information in  
12 Plaintiff's closed investigation records which has caused an adverse determination and  
13 impact upon Plaintiff, including but not limited to denying Plaintiff's request to correct  
14 his records, initially and on appeal, including the June 8, 2022, false notice of allegation  
15 letter signed by defendant Allen, and which it knows is false, misleading, incomplete, and  
16 inaccurate. The agency's conduct, by Allen and Does, has been willful and deliberate.  
17 Denying the request for correction constitutes an adverse determination. The Plaintiff has  
18 suffered pecuniary harm.

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21 95. Defendant agency's conduct of maintaining the inaccurate records continues to  
22 cause Plaintiff harm and damages, including his mental health and aggravates his  
23 hypertensive medical treatment causing harm and monetary loss to Plaintiff, and out of  
24 pocket medical expenses. Plaintiff has been denied loss of economic opportunity and a  
25 decreased competitive position and opportunity in applying for other federal positions  
26 and has a potential loss of clients because of the inaccuracy records maintained by the  
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1 agency which falsely infers and states by citing violations of policy and rules. The  
2 Plaintiff was investigated for misconduct, when he was improperly investigated for  
3 managerial decisions in violation of agency regulations and instructions, including HHS  
4 Instruction 752 and 45 C.F.R. Part 73.  
5

6 96. The inaccurate, unfair, and incomplete records also subject the Plaintiff to additional  
7 scrutiny of future security clearances and suitability determinations pursuant to 5 C.F.R.  
8 Part 731, *et al.*, and lessens his employment opportunities, by negatively impacting his  
9 competitiveness for federal and other employment. The investigation will be reviewed and  
10 considered in any future suitability determination. The denial of correcting the records  
11 constitutes an adverse determination under federal law. The records maintained by the  
12 agency are not accurate, are unfair, and are incomplete. The Plaintiff seeks all damages  
13 allowed by law. Defendant agency in the settlement agreement agreed that no adverse  
14 findings were made against Plaintiff in the investigation. That stipulation is binding upon  
15 defendant Allen and the agency.  
16  
17  
18

19 **COUNT 3. Age Discrimination under the ADEA, Plaintiff's Employment Claim and**  
20 **Post-Employment Retaliation.**

21 97. Plaintiff incorporates by reference all previous paragraphs alleged herein.

22 98. Defendant Allen has exhibited a pattern of discrimination against aged employees.  
23 Judge P.G. has just returned to her duties after being constructively discharged by Allen.  
24 The agency's decision found Allen committed discrimination against her for denying her  
25 medical accommodation. Judge P.G. is also an aged employee (67 years old). The agency  
26 found Allen's actions to be against agency policy and required a notice of posting of  
27  
28

1 discrimination. Evidence of discrimination against other employees is relevant and  
2 probative in discrimination cases. *Jamal v. Wilshire Management Leasing Corp.*, 320 F.  
3 Supp. 1060 (D.C. Ore. 2004).

4  
5 99. Plaintiff received disparate treatment and was subjected to a hostile work  
6 environment. Plaintiff is in the protected age class, and he was satisfactorily performing  
7 his duties as an ALJ and manager, was subjected to adverse employment action by falsely  
8 being placed under investigation and placed upon investigative leave, resulting in his  
9 constructive discharge. He was replaced by a substantially younger individual, to include  
10 assigning Plaintiff's duties to Carla McGregor, the hearing office director, and another  
11 younger management judge from the Atlanta Field Office, and eventually replacing  
12 Plaintiff full time by assigning his duties to Judge John Bergen. All are substantially  
13 younger than Plaintiff by some 15 years or more. Plaintiff was also subjected to substantial  
14 and pervasive hostile acts which led to constructive discharge, which included acts of direct  
15 discrimination and retaliation, where a senior HQ leader and Human Resources Director,  
16 cursed and yelled at Plaintiff over a 35 minute period in a car ride knowing Plaintiff could  
17 not exit, and made disparaging comments about his age; where a Jane Doe management  
18 official tried to undermine Plaintiff's authority and made disparaging comments about  
19 Plaintiff's age to a supervisory attorney who reported the conversation to Plaintiff; and  
20 where another agency management official left a disparaging note on his desk with severe  
21 age related disparaging notations. The Plaintiff further had his case records concealed by  
22 certain Does, and over 800 case dispositions were wrongly credited to another field office  
23 to intentionally lower the Phoenix Field Office disposition statistics to which Plaintiff was  
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1 responsible. The Human Resources Director who cursed at Plaintiff also had an  
2 instrumental role in keeping Plaintiff from being interviewed for the position of chief  
3 judge. Plaintiff was the only OMHA employee not allowed to interview and was some 10-  
4 24 years older than other applicants, and was told the agency did not have the time to  
5 interview him. Discrete acts include the acts by Allen and Does relating to the investigation  
6 and being placed on investigative leave and providing Plaintiff with false notice of  
7 discrimination, which was contained in the June 8, 2022, notice letter and being deprived  
8 of all his due process rights associated with the investigation. All initial acts were also part  
9 of a retaliation pattern by ADIs Allen and Does because the Plaintiff participated in  
10 protected activity including, he had complained to agency DEI officials the agency  
11 discriminated against Hispanic descent applicants relating to ALJ hiring at the Phoenix  
12 Field Office. Post-employment retaliation has been motivated by Plaintiff filing his two  
13 previous EEO-related lawsuits and his EEO administrative claims with the agency.

14 100. The Supreme Court has held retaliation and post-employment retaliation  
15 discrimination is actionable under the ADEA. *Gomez-Perez v. Potter*, 553 U.S. 474 (2008)  
16 (applying retaliation claims to federal employees); *Robinson v. Shell Oil Co.*, 519 U.S. 337  
17 (1997) (Title VII, holding the term employee includes former employees). Acts of age  
18 continued discrimination and post-employment retaliation include continued threats and  
19 harassment including the agency denying Plaintiff's records correction request by the  
20 agency on August 20, 2024, and October 3, 2024, knowing the records contained  
21 incomplete and false information, and admitting so two months later, but taking no  
22 corrective action. This act of retaliation has caused Plaintiff harm including loss of  
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1 employment opportunities, by the agency maintaining inaccurate and false information in  
2 closed investigation records in retaliation for Plaintiff filing his original EEO complaint  
3 with the agency, and his recent EEO complaint with the agency on January 8, 2025, when  
4 he discovered fraudulent concealment conduct, and his previous age discrimination court  
5 case, and complaints relating to OMHA discriminatory hiring practices for ALJs. The  
6 elements of a retaliation claim must plead that Plaintiff engaged in protected speech, an  
7 adverse employment decision, and causation. The terms adverse action and personnel  
8 employment action are defined broadly. Federal employees only need to establish that age  
9 discrimination was a motivating factor in any employment related decision, not “but for”  
10 causation. *Babb v. Wilkie*, 140 S. Ct. 1168 (2020). Threats and harassment are defined as  
11 adverse action under federal case law.

12 101. The agency has committed post-employment threats and harassment, including  
13 threats that the agency could disseminate false, incomplete, and inaccurate information,  
14 including a draft settlement agreement relating to the administration investigation which  
15 contains confidential settlement communications, by designating such records as public  
16 and releasable under the Freedom of Information Act. The agency also knowingly  
17 maintains employment information relating to Plaintiff which was required to be destroyed  
18 under NARA general schedule records rules. Denial of correction of his closed  
19 investigation records maintained by the agency constitutes post-employment retaliation  
20 and an adverse employment action, just like post-employment compensation matters  
21 denying unemployment benefits, disability benefits, and terminating severance packages,  
22 post-employment. *Ward v. Wal-Mart Stores, Inc.*, 140 F. Supp. 2d 1220 (D.N.M. 2004;

1 *Stezzi v. Citizens Bank of Pa.*, No. 10-4333, 2012 WL 4717900 (E.D. Pa. 2004). Post  
2 employment threats and harassment have also been deemed to be post-employment adverse  
3 employment actions. *Reed v. Shepard*, 939 F.2d 484 (7<sup>th</sup> Cir. 1991).

4  
5 102. Defendants Allen and Does (ADIs) have retaliated against Plaintiff by non-  
6 compliance with the settlement agreement, including not maintaining the closed  
7 investigation records in one secured location with the agency's Office of General Counsel  
8 and by reneging on terms in the agreement, relating to its agreed term the agency made no  
9 findings adverse to Plaintiff. Allen and/or Does, as alleged discriminating individuals,  
10 appointed Ms. Karen Ames, a conflicted employee who was named an ADI in the First  
11 Lawsuit, to be the deciding official for the Secretary relating to Plaintiff's recent and  
12 required January 8, 2025, EEO informal complaint process, and by providing false and  
13 incomplete information during interviews with agency EEO specialist E. Jones. Allen's  
14 conduct was motivated wholly or in substantial part, because of age discrimination.  
15 Retaliation continued because Plaintiff participated in an EEO and protected activity by  
16 filing his age discrimination claim with the agency and in court. Prior to the execution of  
17 the settlement release, Allen committed additional discriminatory acts and retaliation  
18 because of age by concealing material evidence including the real purported reason for the  
19 investigation and by not taking action to correct Plaintiff's records and continued to  
20 discriminate against Plaintiff because of age.

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25 103. The adverse employment actions committed in 2022 include placing Plaintiff under  
26 a bad faith investigation and on investigative leave, and by violating Plaintiff's rights under  
27 the Older Workers Benefit Protection Act in June 2023. The OWBPA requires a knowing  
28

1 and informed waiver before an age discrimination case may be settled. Defendant Secretary  
2 and ADIs Allen and Does, violated those safeguards by concealing from Plaintiff the real  
3 reason for the investigation. Violating the OWBPA voids the settlement release. 29 U.S.C.  
4 Sec. 626(f). Allen's continuing conduct of concealing the purported real reason for the  
5 investigation constitutes post-employment retaliation and establishes Allen deliberately  
6 allowed Plaintiff's records to be maintained with false accusations contained therein.  
7

8 104. The release is null and void because of Allen's fraudulent, deceptive and misleading  
9 conduct. Plaintiff's prior age discrimination claims, and post-employment retaliation  
10 claims are actionable. Under the no tender rule, Plaintiff is not required to return the benefit  
11 of the bargain received but is subject only to a monetary offset for the defendant Secretary  
12 after the final award, if higher. Any statute of limitations for filing new discriminatory acts  
13 is likewise tolled for the same reasons. The discrimination relates back to Plaintiff's  
14 employment with the agency. Defendants Allen's and Does' acts of deception, fraud and  
15 misrepresentation concealed material evidence from the Plaintiff, including concealing the  
16 real reason for the investigation and detrimentally impacted the settlement agreement and  
17 the judicial settlement process. Disclosure of the purported real reason for the investigation  
18 would have significantly strengthened Plaintiff's litigation position, and his negotiation  
19 posture. *X-Cel Sales LLC v. A.A. Smith Corporation*, supra. Allen had a duty to disclose all  
20 acts of age discrimination and material evidence prior to executing the settlement  
21 agreement. Allen had a duty to disclose the purported real reason for the investigation under  
22 court rules and federal regulations as pleaded above. Allen had a duty to make sure the  
23 government's pleading did not contain false information.  
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1 105. The Plaintiff was 68 years old when he was discriminated against because of age by  
2 being placed under investigation, and when ADI and defendant Allen signed and sent him  
3 false statements in the allegation notice letters, 69 years old when he retired, and 71 years  
4 old when he learned of the newly disclosed hostile and discriminatory acts and course of  
5 discriminatory conduct and retaliation, on December 10, 2024. Plaintiff is in the protected  
6 class. The Plaintiff complied with federal regulatory tolling requirements and exhausted  
7 administrative remedies by filing his new age discrimination complaint with the HHS EEO  
8 office on January 8, 2025, and within 45 days of learning of the newly disclosed  
9 discriminatory acts.

10 106. Plaintiff officially learned of the concealed material evidence on or about December  
11 10, 2024, and provided 30 days' notice to the EEOC as set forth within 29 C.F.R. Sec.  
12 1614.201 on or about February 14, 2025, and has completed all procedural (non-  
13 jurisdictional) requirements to file his age discrimination claim directly in Federal Court.  
14 Previously, relating to the First Lawsuit, age discrimination claim, Plaintiff had likewise  
15 and timely filed his EEO claim with the HHS EEO office within 45 days of being last  
16 extended and placed on investigative leave on or about September 29, 2022. (First  
17 Lawsuit).

18 107. ADI Allen caused Plaintiff harm and adverse actions and impact by his intended  
19 acts of age discrimination and retaliation and failure to disclose the purported real reason  
20 for the investigation. The discriminatory acts and omissions of defendants Allen and Does,  
21 caused or significantly contributed towards the adverse action of and loss earnings by  
22 having Plaintiff's correction request denied and Plaintiff has suffered loss of economic  
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1 opportunity. Adverse actions include but are not limited to placing Plaintiff under  
2 investigation and on investigative leave, stalling his access for records requests and  
3 denying Plaintiff's correction of records request, making post-employment threats of  
4 wrongfully disseminating information under the FOIA, denying Plaintiff an independent  
5 and impartial review of his administrative EEO claims, and constructive discharge. ADIs  
6 Allen and Does, interfered in the agency's EEO informal complaint process denying  
7 Plaintiff the opportunity to informally resolve his January 8, 2025, EEO claim by  
8 appointing or having a conflicted person, Karen Ames, to act as the deciding official, for  
9 the Secretary, and which constitutes an adverse action and impact which harmed Plaintiff,  
10 as post-employment harassment and threats continue.

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14 108. Plaintiff suffered discriminatory and hostile acts and disparate treatment because of  
15 age. Wrongfully placing Plaintiff under investigation and upon investigative leave  
16 contributed to an already existing hostile work environment, which was substantial and  
17 pervasive, leaving the Plaintiff with no other option than to retire. The false statements by  
18 ADI Allen contained material information by misidentifying the most basic information  
19 necessary to put Plaintiff on notice of why he was being investigated. ADI Allen laid out a  
20 perfect disguise and pretext by making a false allegation against Plaintiff, establishing the  
21 investigation was a pretext to discriminate against Plaintiff because of age. The false  
22 allegation inferred serious employment misconduct, while the purported real allegation  
23 related to managerial duties, in which Plaintiff acted, and had the authority to conduct and  
24 make independent and discretionary decisions, and which should not have been subject to  
25 a formal employment investigation according to agency regulations and instructions. The  
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1 parking situation allegation would not have supported placing Plaintiff on investigative  
2 leave pursuant to 5 U.S.C. Sec. 6329(b). Allen's conduct of not following the statutory  
3 requirements relating to the investigative leave decision constitutes further discrimination  
4 and retaliation and adverse action.  
5

6 109. Plaintiff had been vested with broad authority and managerial discretion granted by  
7 the enacting organizational structure to manage the Phoenix Field Office and had every  
8 right to contact GSA for information about the parking situation. The Plaintiff could and  
9 would have been able to have successfully defended himself against the real allegation  
10 relating to the parking situation, had Allen noticed it. Defendant Allen's conduct of  
11 providing false notice of the allegation to support a discriminatory investigation of Plaintiff  
12 and then concealing his conduct and the nature of the false allegation, constitutes a  
13 concealed discriminatory and retaliatory hostile act against Plaintiff which relates back to  
14 his on duty discrimination suffering, and an extension of it, and which is actionable under  
15 the ADEA, and which was concealed during the First Lawsuit by the ADIs Allen and Does.  
16 Plaintiff was deprived by Allen and Does of the opportunity to obtain additional remedies  
17 in the settlement agreement, including reinstatement and substantially increased money  
18 damages.  
19

20 110. Defendants and ADIs, Allen and certain potential defendants Does, have further  
21 admitted their discriminatory conduct during interviews with the agency's EEO counselor,  
22 E. Jones, after Plaintiff filed his EEO administrative claim with the agency on January 8,  
23 2025. ADI Allen admitted that at no time did he inform Plaintiff that the real reason for the  
24 investigation was the parking situation, and other unnamed managerial acts. Making  
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1 additional false statements and acts to conceal his discriminatory conduct and to create yet  
2 another false pretext Allen and Does infer they would have eventually informed Plaintiff  
3 of the real reason for the investigation had Plaintiff not retired on September 30, 2022,  
4 before his scheduled investigative interview. Their conduct proves otherwise. They all  
5 failed to inform Ms. Jones Allen had already denied Plaintiff's request for more specific  
6 information and that he had instructed appointed investigators Stewart and Tran to inform  
7 Plaintiff that the investigation was limited in scope to the allegation contained in the June  
8 8, 2022.

11 111. Knowing his attempted mitigating statements to the EEO counselor were false at  
12 the time made, ADIs Allen continued to attempt to conceal his discriminatory actions, and  
13 attempted to impede the agency's own administrative EEO process. Allen did not inform  
14 witnesses who were interviewed during the investigation with the purported real reason for  
15 the investigation, and Allen concealed the real reason for the investigation from Plaintiff's  
16 attorney, Peter Noone. Witnesses were questioned about numerous subjects unrelated to  
17 either the allegation contained in the June 8, 2022, notice letter or the parking situation,  
18 including a matter related to another Phoenix office judge's military leave, which Allen  
19 knew Plaintiff had kept his supervisor and the agency fully informed and was not a matter  
20 for investigation. Actions sometimes speak louder than words, especially false words, and  
21 defendants Allen continued to conceal the false nature of the allegation through the records  
22 correction process (May-October 2024) and the initial disclosure statement process, during  
23 the First Lawsuit (June 2023).

28 112. Defendant Allen had a higher duty as an HHS supervisor and is prohibited from

1 retaliating against employees for engaging in protected speech and whistle blower activity.  
2 5 C.F.R. Sec. 752; 45 C.F.R. Part 73. The retaliation is because Plaintiff exercised his rights  
3 to engage in protected activity, including his right to participate in the EEO process, by  
4 filing his age discrimination lawsuit (CV-22-01568-PHX-SMB), by filing his January 8,  
5 2025, EEOC claim with the agency, and to legally seeking access to EEO related records,  
6 maintained by the agency under the Privacy Act.  
7

8  
9 **Count 4. *Bivens* Action Constitutional Violations, Violation of Due Process of Law  
10 based upon Age Discrimination, and Equal Protection Component, and Retaliation.**

11 113. Plaintiff incorporates by reference all previous paragraphs alleged herein.

12 114. Defendant Allen and Does, acting under color of law and in a manner to be  
13 purporting to fulfill their official duties, intentionally and knowingly violated Plaintiff's  
14 constitutionally protected rights including his right to due process of law. The employment  
15 and post-employment age discriminatory and retaliatory acts pleaded above are  
16 alternatively or jointly, actionable under *Bivens*. Plaintiff was not a federal employee after  
17 September 30, 2022, and had no personnel relationship with defendant Allen or defendant  
18 Does for time periods two and three herein, during which time defendants Allen and Does,  
19 engaged in numerous deceptive acts to conceal their conduct and the purported real reason  
20 for the investigation. Defendant Allen's action of making a false statement to conduct an  
21 employment investigation, and concealing evidence violates federal regulations and even  
22 federal criminal statutes. Moreover, Allen side-stepped regulations since he initiated the  
23 investigation without evidence of misconduct. 5 C.F.R. Sec. 2635, *et al.* (federal employee  
24 obligations), and 45 C.F.R. Part 73, *et al.* (agency standards of conduct), HHS Instructions  
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1 752), and 18 U.S.C. Sec. 1001; 18 U.S.C. Sec. 1341 (false statements, concealment, and  
2 false and fraudulent schemes through the mail).

3 115. This is a true *Bivens* action and very similar in fact to *Davis v. Passman*, supra.  
4 Applying *Bivens* relief here is not an extension to a new area or other protected conduct.  
5 The constitutional violations committed here are based on the Due Process clause of the  
6 Fifth Amendment, and just like *Davis v. Passman*, with an underlying equal protection  
7 component, based in discrimination, and an additional aggravating fact which relates to  
8 defendant's conduct violating Plaintiff's free speech right under the First Amendment, by  
9 impeding his right to contact another federal agency for information for the welfare of his  
10 employees, and to report corrupt conduct under federal regulations. In *Davis*, the  
11 underlying equal protection component was based upon sex discrimination within a federal  
12 employment context, a Congressman and a staffer, but at least Congressman Passman in  
13 that case, admitted in writing he was firing and replacing Ms. Davis because of her gender,  
14 and did not attempt to conceal his conduct. For what it is worth at least, he did not engage  
15 in deceptive conduct as defendant Allen has done.

16 116. Defendant Allen orchestrated an elaborate deceptive scheme because of age,  
17 knowing Plaintiff had a severe hypertensive medical condition, to either force or encourage  
18 Plaintiff to retire early from the agency by filing a false allegation against him, and which  
19 he and defendant Does have concealed for over two years. The purported real allegation,  
20 the parking situation, was known by Allen that it was not misconduct but related to  
21 Plaintiff's broad and discretionary management duties provided to him by the agency's  
22 legally mandated organizational structure. Allen further participated in unlawful retaliatory  
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1 conduct because Plaintiff participated in protected whistleblower activity as Allen was  
2 aware Plaintiff was going to report Allen's fiscal conduct terminating judges' parking  
3 privileges to an outside agency. Allen violated 5 C.F.R. Sec. 752.101 *et al.*, (supervisor  
4 retaliation prohibited).

5  
6 117. The two notice letters signed by defendant Allen used to support the investigation  
7 were false, misleading, inaccurate, and incomplete. The false notice was not disclosed  
8 during the age discrimination case and was ignored and not disclosed when Plaintiff  
9 requested correction of his records in May and October 2024. Allen refused to provide  
10 Plaintiff with complete notice of the allegation to support the investigation. Allen is a  
11 licensed attorney and ALJ and is aware of the critical importance of due process notice.  
12 The purported real reasons were concealed from Plaintiff during the entire course of the 4-  
13 month long investigation, the prior age discrimination lawsuit, and the records correction  
14 process. Allen deprived Plaintiff of due process of law and impeded his attorney's ability  
15 to represent Plaintiff by failing to disclose the true nature of the allegation to attorney Peter  
16 Noone.<sup>1</sup>

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22 <sup>1</sup> Plaintiff upon belief and information, alleges approximately, less than a dozen witnesses  
23 of some 100 employees, from the Phoenix Field Office, were interviewed during the  
24 investigation and each for only a very short duration, and they were not advised of the real  
25 reason for the investigation. The investigation was a punitive fishing expedition and  
26 conducted in bad faith. Plaintiff believes not even the appointed investigators, Stewart and  
27 Tran and later Judge Le who replaced Tran, knew of the real reason for the investigation.  
28 The four-month duration was only because Plaintiff's hypertensive medical condition was  
largely uncontrolled because of the stress and prevented his participation earlier. Plaintiff  
was scheduled last and was to be interviewed on October 7, 2022, but retired on September  
30, 2022, after he was informed defendant Allen would not provide specific notice of the  
allegation and would not elevate the investigation to the Office of Inspector General, which  
Plaintiff had requested. Plaintiff is one of at least five known management judges who were  
investigated in this or similar fashion by Ms. Ames or Allen.

1 118. The required initial disclosure statement, in the prior age discrimination case, was  
2 not filed by defendant Secretary and/or did not contain information relating to the real  
3 reason for the investigation. Defendants Allen and Does have manipulated the prior Court  
4 and settlement proceedings by not disclosing that the investigation was initiated upon a  
5 false pretense and by denying at first that managerial acts were not involved in the  
6 investigation. Allen and Does had a duty to disclose their conduct to Plaintiff, and violated  
7 the Older Workers Benefit Protection Act by depriving Plaintiff of material information  
8 which impeded and prevented informed consent. The defendants' conduct deliberately  
9 providing inaccurate information in their pleadings establishes an intent to further  
10 manipulate the judicial process to conceal their continued retaliatory acts. (CV-22-01568-  
11 PHX-SMB, Doc. 27).

12 119. The false notice of the allegation was designed to prevent Plaintiff from mounting  
13 a defense and inferred Plaintiff had committed serious misconduct when defendants knew  
14 that was not correct. Placing Plaintiff on investigative leave and removing him from duty  
15 was intended to give credence to the false notice allegation to falsely infer Plaintiff had  
16 committed serious misconduct. Plaintiff seeks all damages and relief allowed by law  
17 against defendant Allen and defendants Does in their individual capacity for violating his  
18 due process of law civil rights. Allen and defendants Jane and John Does, conspired to  
19 violate Plaintiff's constitutional rights. Due process of law and basic rights under the  
20 Constitution requires any federal administrative investigation to be conducted in a fair and  
21 impartial manner. Defendant Allen initiated an improper bad faith investigation based upon  
22 a false allegation, which defendant Allen knew was vague, overly broad, false and material,  
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1 and which Plaintiff could not defend against, and which Plaintiff relied upon, and which  
2 was intended by defendant Allen to be coercive and encourage Plaintiff to retire. Allen  
3 concealed the purported real reason for the investigation. Allen under color of law and  
4 purporting to exercise his lawful duties instead provided false notice of the allegation and  
5 concealed his conduct, and his conduct violates federal regulations and is potentially  
6 criminal. He is not eligible nor entitled to qualified immunity. He is liable for punitive  
7 damages. Allen continued to deprive Plaintiff of die process in his post-employment  
8 conduct as alleged previously herein.

11 120. Defendant Allen controlled the investigation and made key decisions which denied  
12 Plaintiff due process of law, informed consent, and misled Plaintiff. Federal investigations  
13 motivated for political reasons, harassment, bad baith, or intimidation are deemed invalid.  
14 *Pennington v. Donovan*, 574 F. Supp. 708 (S.D. Tex. 1983) cited and approved in  
15 numerous Circuits. The Civil Service Reform Act, Pub. L. 95-454, 92 Stat. 1111 (CSRA  
16 1978) codified at various sections within Title 5, does not bar nor preempt this claim, and  
17 is not an exclusive remedy in this case, as this case involves potentially serious criminal  
18 conduct, serious constitutional rights violations and fraudulent conduct by defendant Allen  
19 for making a false statements serious enough to impose criminal liability, and basing an  
20 investigation under a false pretense, and thereafter committing numerous acts and  
21 omissions by concealing his deceptive conduct and his false statements. Filing a false  
22 statement in an official proceeding and concealing the conduct may be considered criminal  
23 acts. 18 U.S.C. Sec. 1001.

28 121. The release executed in the previous age discrimination lawsuit is not enforceable

1 because of the false statements and committed fraud, deception, overreaching and  
2 misrepresentation, and because Allen, Does, and the agency, violated the OWBPA waiver  
3 requirements. Allen concealed his deceptive conduct for over two years. The crime-fraud  
4 exception will apply in this case to certain attorney-client communications to the extent the  
5 communications relate to criminal conduct by any attorney who knowingly recommended  
6 or assisted Allen in drafting the false notice letters. The CSRA was never intended to be an  
7 exclusive remedy under circumstances such as this, where deception and corruption by  
8 certain agency officials permeated the entire investigative process. *Spagnola v. Mathis*, 859  
9 F2d.223 (D.C. Cir. 1988) (en banc) (while applying the CSRA to the facts of the case but  
10 holding federal employees not precluded from filing civil rights violations for serious  
11 constitutional violations). *Collins v. Bender*, 195 F.3d 1076 (9<sup>th</sup> Cir. 1999) and *Brock v.*  
12 *United States*, 64 F. 3d 1421 (9<sup>th</sup> Cir.1995) (criminal conduct falls outside the scope of the  
13 CSRA).

14 122. Moreover, many wrongful acts committed by Allen, including fraudulent  
15 concealment and age discrimination retaliation, took place in period 2 and 3, after Plaintiff  
16 left federal service. Making false allegations to prevent a federal employee from seeking  
17 information from a federal agency to promote the safety of his employees, and/or reporting  
18 fraud, waste, abuse, and corruption, further violates Freedom of Speech and constitutes  
19 blatant discrimination and retaliation and constitutional violations.

20 123. Plaintiff's claim here is a true *Bivens* case just like in *Davis v. Passman*, supra., and  
21 is akin to the line of federal cases which hold that warrantless wiretaps and search warrants  
22 and sexual assaults are well outside of normal employment matters covered within the  
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1 CSRA. Allen's conduct violates 18 U.S.C. Sec. 1001 and Sec. 1341. The notice letters  
2 contained false, misleading and incomplete statements. Allen sent false letters to Plaintiff  
3 using the United States mail.

4  
5 124. The Plaintiff would not have known of the deception within a CSRA context. Allen  
6 controlled the investigative process and all the cards and with the help of Does, Allen  
7 provided false notice to Plaintiff and blatantly violated Plaintiff's procedural and  
8 substantive due process rights and discriminated against Plaintiff because of age.  
9 Defendant Allen wanted to reduce the ALJ Corps within his agency and did not want a 68-  
10 year-old office chief judge. This included placing Plaintiff on investigative leave without  
11 a factual finding, without cause, and under a false pretense, to bar Plaintiff from his office  
12 and duties and to prevent him from finding out about the false nature of the investigation.

13  
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15 125. Just like in *Davis v. Passman*, supra, Plaintiff was subjected to discrimination (age)  
16 and his due process rights were violated, and there exists an equal protection component to  
17 the suffering consequences, as the agency treated an aged employee with hypertension  
18 differently. Plaintiff was previously denied an interview for the chief judge position,  
19 although qualified for the position, was placed under investigation in violation of agency  
20 instructions and regulations for acts not construed under agency policy to be misconduct  
21 and was placed on investigative leave in violation of the standards set forth in 5 U.S.C.  
22 Sec. 6329(b), and without making the required factual finding. The record in the previous  
23 age discrimination case discusses two incidents of direct evidence of age discrimination by  
24 agency personnel, and potential Does defendants, who made age related disparaging  
25 remarks against Plaintiff. The discrimination is further established by Allen's recent acts  
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1 of discrimination in January 2025, with the agency finding Allen constructively discharged  
2 another judge from the Phoenix Office and discriminated against her because of her  
3 disability. That judge was 67 years old when Allen discriminated against her. Allen has  
4 exhibited a pattern of discrimination, and it is his conduct which is at issue.

5  
6 126. The purported real reason relating to the parking situation, now given by the  
7 defendant agency for the investigation, establishes Plaintiff did nothing more than fulfill  
8 his duty to act for the welfare of his judges to determine if he could legally acquire a few  
9 parking spaces within the secured area of the Phoenix Federal Building, after Allen  
10 terminated the parking privileges under questionable fiscal circumstances. It is so benign  
11 an act that on its face it establishes it is a pretext to discriminate against Plaintiff. Age  
12 discrimination figures prominently here just like sex discrimination figured prominently in  
13 *Davis v. Passman*, supra. The very recent act by defendant Allen and Does of allowing a  
14 clearly conflicted employee, Ms. Ames, who had initiated the discriminatory investigation  
15 against Plaintiff, to determine for the Secretary the agency would not resolve Plaintiff's  
16 new age discrimination complaint informally within the federal EEO process, further  
17 establishes the CSRA provides no remedy for Plaintiff. Allen and Jane and John Does have  
18 acted outside their duty and have impeded the normal agency EEO process.

19  
20 127. The Plaintiff had full agency authority to attempt to pay for his judges' parking  
21 privileges after defendant Allen terminated those privileges. Defendant Allen and Does,  
22 continued to discriminate against Plaintiff by concealing material evidence and  
23 manipulating the judicial settlement process, and further concealed their unlawful conduct  
24 by committing further false and fraudulent acts making sure Plaintiff's correction of  
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1 records request was denied. Only this Court, through a *Bivens* claim, can address the type  
2 of discrimination and constitutional violations suffered by Plaintiff.

3 128. In addition to violating 18 U.S.C. Sec. 1001, which prohibits federal employees  
4 from making false statements and separately concealing such conduct, defendant Allen  
5 abused the agency's legal and investigatory processes by using a pretext that Plaintiff  
6 committed misconduct and that he was a threat to persons or governmental interests, with  
7 no evidence and making no findings.  
8

9  
10 129. Plaintiff is entitled to all damages allowed by law, including punitive damages for  
11 the outrageous and unlawful conduct of defendant Allen, and defendants Does, and there  
12 is a need to deter such unlawful conduct in the future, especially since Allen has been found  
13 by the agency to continue to discriminate against another employee. Alternatively, all  
14 damages related to post-employment age discrimination acts committed by Allen, and  
15 Does which are not covered by the ADEA are actionable under *Bivens* and damages may  
16 be awarded against Allen and Does, including for their post-employment discriminatory  
17 conduct, which include a right to trial by jury and punitive damages.  
18

19  
20 **Count 5. False Claims Act, Retaliation and Whistleblower Relief and Protection.**  
21

22 130. Plaintiff incorporates by reference all previous paragraphs alleged herein.

23 131. An alternative pleading to the purported "real" reason for the investigation offered  
24 by the agency, being the parking situation, Plaintiff alleges that retaliation under the False  
25 Claims Act was the motivating reason to place Plaintiff under investigation and upon  
26 investigative leave. Pursuant to 31 U.S.C. Sec. 3729, Sec. 3730(h) *et al.*, the False Claims  
27 Act (Lincoln Law), there exists and existed at the time sufficient evidence and facts to  
28



1 allow a reasonable person to believe that defendant Allen, from on or about November 8,  
2 2020 through the present, participated in improper fiscal conduct, and joined certain Jane  
3 and John Does in an on-going payment or omission of payment scheme and conspiracy,  
4 and knowingly granted approval for and/or made certain false and material statements in  
5 conjunction therewith, and conspired with Jane and John Does, to make certain false and  
6 material statements, for the purpose of terminating Judges' paid parking privileges for  
7 unlawful and/or punitive reasons, in an attempt to reduce the OMHA judges' ranks, and  
8 concealed an employee preference and expenditure for funds, and or loss of value and cost  
9 reimbursement relating to Ames' office space at 333 Cassell Drive, Baltimore, Maryland.

10 132. Sufficient evidence and facts existed that Allen took certain action approving and/or  
11 acquiring the use of government leased property at 333 Cassell Drive, Baltimore, Maryland  
12 ("the second office"), to obtain unneeded and unlawful second office space for the  
13 convenience of one employee (Karen Ames) so she would be able to work close to her  
14 home and not have to report to her assigned office in Arlington, Virginia, which conduct  
15 is in violation of agency regulations, and constitutes an unlawful employment preference.  
16 Allen's conduct resulted in a loss of value and use of that office space to the government  
17 for mission essential needs, and wrongful loss of the use and value of that office space,  
18 causing pecuniary harm and loss to the government.

19 133. That defendant Allen and Does, did also allow other employment preferences  
20 including allowing certain employees to work at remote locations because of convenience  
21 and not because of reasonable medical accommodation or mission needs, and wrongfully  
22 paid temporary duty and travel expenses (TDY) to those employees, essentially providing  
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1 them with their own personal government expense accounts to support their personal  
2 preference to live and work in a location away from their actual duty location. Allen had  
3 knowledge Plaintiff was aware of those practices. This included employees M.K. and  
4 A.M., previously housed in the Denver, Colorado area, and investigator Daniel Kahane  
5 from the Tampa, Florida area.  
6

7 134. That defendant Allen made certain claims to terminate paid parking privileges at the  
8 Phoenix Field Office and other offices, by interfering with the GSA office lease and  
9 approved budget appropriations and by falsely claiming the funds did not exist, or were  
10 needed for other unnamed and false purposes, and for the purpose of encouraging aged  
11 judges and employees to retire, and who did not provide an accounting of the monies to  
12 management judges, who are the focal point of leadership for the OMHA under the  
13 enacting organizational structure, and which decision negatively impacted the field offices,  
14 including employee morale, with one judge retiring, Judge W.S. Allen informed  
15 management judges of his decision to terminate parking privileges at field office but  
16 provided no justification where the saved monies were to be used.  
17

18 135. That other federal employees are not afforded location preferences and second  
19 offices, and separate travel and per diem expense accounts to accommodate personal  
20 convenience, and the employment preferences incurred exorbitant and unlawful expenses  
21 to the government in the form of cost reimbursement or loss of cost reimbursement, double  
22 expenses to the government. loss of use and value, and/or to OMHA or other components  
23 of the HHS, including NIH, and/or which took money from other proper OMHA  
24 expenditures and mission related functions and activities. That in the recent Privacy Act  
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1 litigation defendants Allen and Does, concealed their wrongful activities, by taking false  
2 and deceptive action to deny the existence of records relating to the second office  
3 preference, including denying the existence of any property records in a formal response  
4 to Plaintiff on January 17, 2025, relating to Plaintiff's request to access those second office  
5 space records under the FOIA.  
6

7 136. The agency FOIA officer expressly stated she had checked with OMHA officials  
8 who said there were no records relating to the 333 Cassell Drive, Baltimore office lease.  
9 That evidence to the contrary exists, including an affidavit signed by OMHA employee  
10 Karen Ames, that she had received access to and used the second office since 2015, and  
11 evidence contained on the NIH webpage, that the NIH maintains space and lease records  
12 in its property records depository. (CV24-00417-TUC-RM, Doc. 34). Additionally, senior  
13 OMHA leader and former OMHA Budget Director Eileen McDaniel, admitted at a senior  
14 leadership meeting in about May 2022, Ms. Ames does occupy that second office, but  
15 provided no mission need justification.  
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19 137. That the second office space preference constitutes an unlawful employment  
20 preference under the HHS standards of conduct, 45 C.F.R. Part 73, and that under the basic  
21 obligations for all federal employees, 29 C.F.R. Sec. 2635.101(11), defendant Allen had a  
22 duty to follow federal law and rules and regulations and to report and cease such unlawful  
23 authorization and to NOT participate in allowing payments in the form of cost  
24 reimbursements, or omissions of payments, to other agency components. Allen has a  
25 regulatory duty to protect government property and ensure it is used for mission purposes.  
26  
27  
28 5 C.F.R. Sec. 2635.101(6), (8), (9), & (14). The unlawful expenditure either resulted in a

1 reduction of funds for the OMHA or a reduction in the NIH funds, or other agency  
2 component, prevented the office space from being used for mission needs, and the preferred  
3 employee received personal value for the use of the office which is not authorized by law  
4 or regulations, and which recoupment is warranted. That Ames has occupied the second  
5 office for some ten years at taxpayer expense, which may have a value range in the  
6 hundreds of thousands of dollars range.  
7

8  
9 138. That defendant Allen unlawfully retaliated against Plaintiff for informing his  
10 supervisor, acting Deputy Chief Jonathon Eliot, on June 7, 2022, that defendant Allen's  
11 conduct interfering with the GSA leases for OMHA field offices, was improper and that he  
12 was going to report it to an outside agency to investigate, and that there was a need to  
13 investigate the defendants' fiscal conduct. The Plaintiff was not officially made aware of  
14 defendant Allen's conduct against him and the reason for the investigation was based upon  
15 the parking situation and retaliation for disclosing to Plaintiff's supervisor the need to  
16 investigate Allen, until the agency officially disclosed a new reason for the investigation  
17 on December 10, 2024, relating to the parking situation. That Plaintiff had a protected  
18 speech right to make said statements to his supervisor and had a federal regulatory duty  
19 under 5 C.F.R. Sec. 2635.101(11) to make said statements to report fraud, waste, abuse,  
20 and corruption.  
21

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24 139. That defendants Allen and Does knew of the protected speech activity since Plaintiff  
25 reported it to his supervisor and the supervisor reported it up the chain of command to  
26 defendant Allen, and/or learned of it from other sources. That the protected speech activity  
27 caused defendant Allen and defendants Does to retaliate against him by creating a false  
28

1 allegation against Plaintiff in his June 8, 2022, notice letter and concealing the real reason  
2 for the investigation was to retaliate against Plaintiff because Plaintiff was about to notify  
3 an outside agency of defendant Allen's conduct to interfere with an approved budget and  
4 the GSA lease for the Phoenix Field Office. That the agency's production of records in the  
5 Second Lawsuit establishes defendants knew Plaintiff was going to report Allen's fiscal  
6 conduct to proper authority.  
7

8  
9 140. That defendant Allen, to support his retaliation and provide a cloak of legitimacy to  
10 it, placed Plaintiff on investigational leave and manufactured a vague and false notice of  
11 allegation that he knew Plaintiff could not defend against, to prevent Plaintiff from  
12 disclosing Allen's fiscal conduct. Additionally, defendant Allen provided false notice of  
13 the allegation to Plaintiff in violation of agency standards and policies and due process of  
14 law, so Plaintiff could NOT mount a defense to the investigation, precluding Plaintiff from  
15 presenting relevant and material evidence and calling witnesses, and in an attempt to  
16 discredit Plaintiff in the event an outside agency investigated Allen. Federal case law holds  
17 post-employment acts of retaliation under the False Claims Act are actionable.  
18

19  
20 141. Negative statements and conduct which also impacted plaintiff's post-employment  
21 opportunities are actionable under the retaliation provisions in the False Claims Act. *United*  
22 *States ex rel. Felten v. William Beaumont Hospital*, 993 F.3d 428 (6<sup>th</sup> Cir. 2021). Here, in  
23 addition to retaliation by placing Plaintiff under investigation and on investigative leave  
24 while he was on duty, defendant Allen and Does continued to retaliate against Plaintiff by  
25 its post-employment conduct of tainting the settlement agreement and release in the First  
26 Lawsuit by concealing material evidence of the real reason for the investigation and  
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1 defendant Allen's false notice letters, and taking action or omissions, denying Plaintiff's  
2 attempt to correct and amend the inaccurate closed investigation records in May and  
3 October 2024, amongst other acts pleaded herein.

4  
5 142. Defendant Allen signed false statements at least two times for the purpose of  
6 retaliating against Plaintiff for fulfilling his duty as a federal employee and participating in  
7 good faith and bona fide whistleblower activity, as he was required to do under 5 C.F.R.  
8 Sec. 2635.101(11). That defendant Does, provided material assistance to defendant Allen  
9 by concealing the false statements and participating in conduct to cover up their illegal  
10 activity by informing FOIA and Privacy Act officers the false allegation notice letters were  
11 correct when they knew the information contained in the June 2022 notice letters were  
12 false, and which negatively impacted Plaintiff by denying his correction request, which  
13 constitutes an adverse determination.

14  
15  
16 143. That retaliation provisions under the False Claims Act apply to every person and  
17 include federal employees as both plaintiff-relators and defendants and are not subject to  
18 the CSRA or other administrative exhaustion doctrines and are directly actionable in  
19 federal courts. It applies to the concerted and fraudulent conduct of Allen and Does who  
20 conspired to fraudulently conceal material evidence and to retaliate against Plaintiff by  
21 putting him under investigation. Defendant Allen interfered with previously approved  
22 budget appropriations and GSA contracts for field office leases, including the Phoenix,  
23 Arizona Field Office, by terminating judges' parking privileges at the OMHA Phoenix  
24 Field Office, for the purpose of diverting the funds to undisclosed purposes to include  
25 paying for the unlawful TDY funds and second office space and/or other unlawful or  
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1 unapproved purposes. That the conduct of approving false claims, making false statements,  
2 to incur second office space incurred debts and obligations detrimental to the government  
3 and incurred costs to, the OMHA, NIH, other agency components, loss of use of property  
4 and funds for other legitimate mission purposes, and was done secretly and with deception,  
5 and constitutes a fraudulent and continuous scheme to defraud the government, and which  
6 was outside of lawful duty. All acts further constitute overt acts in furtherance of the  
7 conspiracy.  
8

9  
10 144. To plead a claim for retaliation under the False Claim Act, an employee must plead  
11 and subsequently prove at trial he/she was engaged in a protected activity, that the  
12 defendant knew the Plaintiff was engaged in a protected activity, and that defendant  
13 retaliated against Plaintiff because of the protected activity. Proving the specific underlying  
14 violation under the False Claim Act is not a requirement, only that the Plaintiff was  
15 reviewing or investigating matters reasonably calculated or which reasonably “could” lead  
16 to a viable FCA claim. A protected activity occurs where plaintiff in good faith believes  
17 and a reasonable employee in the same or similar circumstances might believe that  
18 defendant is possibly committing fraud against the government. *Mendiondo v. Centinela*  
19 *Hosp. Med. Ctr.*, 521 F.3d 1097 (9<sup>th</sup> Cir. 2008); *U.S. ex rel. Hopper v. Anton*, 91 F.3d 1261  
20 (9<sup>th</sup> Cir. 1996).  
21

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23  
24 145. The Plaintiff attempted to review the matter in good faith by addressing it at a senior  
25 leadership meeting, with no explanation provided by defendant Allen as to where the  
26 monies from terminating parking would be spent, or why the funds were needed elsewhere.  
27 The Plaintiff was retaliated against shortly after he informed his supervisor, he was going  
28

1 to contact an outside office to review defendant Allen's fiscal actions.

2 146. Allen caused Plaintiff immediate harm mentally, pecuniary harm, emotionally, and  
3 physically, including emotional distress, loss earnings, loss economic opportunity, and  
4 retirement benefits, weight loss and panic attacks, increased stress, loss of reputation, and  
5 loss of position, and as otherwise pleaded above.  
6

7 **Count 6. Declaratory and Equitable Relief: Violations of OWBPA and Waiver**  
8 **Provisions, 29 U.S.C. Sec. 626(f) *et al.*, and Fraudulent Concealment Conduct Renders**  
9 **the Release Invalid.**

10 147. Plaintiff incorporates by reference all previous paragraphs alleged herein.

11 148. Plaintiff seeks declaratory relief declaring that the release of liability is null and void  
12 because defendants Allen and Does have violated the OWBPA and based upon Allen's  
13 deceptive and fraudulent conduct as recognized by federal case law, including fraudulent  
14 misrepresentation and fraudulent concealment, providing false notice of the allegation to  
15 Plaintiff and then by fraudulently concealing his conduct. The Older Workers Benefit  
16 Protection Act (OWBPA) requires ADEA settlement agreements to contain notice of rights  
17 provisions to protect older workers from future discrimination and retaliation. The  
18 OWBPA requires adequate consideration and prohibits release provisions which apply to  
19 future acts. Broad covenants NOT to sue in the future are invalid under the OWBPA. The  
20 OWBPA applies to federal employees' ADEA claims under 29 U.S.C. Sec. 633a and Sec.  
21 626(f). The statute provides certain minimum language waiver requirements, but that list  
22 and language is not exhaustive or exclusive. Waivers under the OWBPA must be based  
23 upon sufficient disclosure and information and be knowing and voluntary. Courts generally  
24 will analyze all circumstances. Informed consent is implicit and required. Improper  
25  
26  
27  
28



1 conduct, including fraud and deception, and withholding material information, precludes a  
2 knowing and voluntary waiver. The burden of proof establishing the validity of a waiver is  
3 on defendant Secretary. 29 U.S.C. Sec. 626(f).

4  
5 149. While the prior age discrimination settlement agreement gave lip service to the  
6 OWBPA, Plaintiff was not officially aware that defendants Allen and Does have withheld  
7 material information from Plaintiff at the time the previous age discrimination case was  
8 settled. This included at the very least the real purported reason for the investigation,  
9 including the parking situation, and other management acts, which have never been  
10 identified, and which were previously denied by the agency in its prior pleadings.  
11 Defendants' acts of concealment precluded Plaintiff from acquiring informed consent and  
12 a knowing and voluntary waiver and constitutes improper conduct and fraud. Defendants  
13 further took advantage of Plaintiff's uncontrolled hypertensive medical condition at the  
14 time to gain a negotiation advantage. Additionally, the terms in the settlement release,  
15 including the term purporting to waive "unknown" occurrences, constitutes an invalid  
16 covenant not to sue for future discrimination and per se violates Sec. 626(f)(1)(C), of the  
17 OWBPA, which also renders the release invalid. The EEOC and federal case law have  
18 determined improper conduct will invalidate OWBPA waivers. See *Pilon v. Univ. of Minn.*,  
19 710 F.2d 466 (8<sup>th</sup> Cir. 1983). The Secretary is responsible for the acts of Allen and Does.

20  
21 150. Allen and defendants Does have further committed acts of age discrimination and  
22 retaliated against Plaintiff because of age after the settlement and violated the OWBPA,  
23 including continuing their wrongful and fraudulent concealment of material information.  
24 The Plaintiff had a motion for partial summary judgment pending at the time he settled  
25  
26  
27  
28

1 with the Secretary, which would have likely been successful had the Secretary, Allen, or  
2 Does, disclosed the real purported reason for the investigation was the parking situation.  
3 The evidence would have established the investigation was a pre-text for age  
4 discrimination and cast severe doubt upon Allen's credibility.  
5

6 151. Plaintiff is entitled to declaratory and equitable relief voiding the settlement release  
7 and may proceed to adjudicate all his ADEA claims, occurring during employment and  
8 post-employment, based upon Allen's discrimination and retaliation including his  
9 concealment conduct, and denying Plaintiff's records correction request in August 2024  
10 and October 2024, and other acts as pleaded above.  
11

12 152. The OWBPA requires adequate consideration. The agency's failure to strictly abide  
13 by the terms of the settlement agreement, the concealment of material information which  
14 would have significantly strengthened Plaintiff's litigation and settlement negotiation  
15 position, and the agency's counsel acknowledgement in the Privacy Act lawsuit that the  
16 agency's monetary award was insufficient, establishes there was a lack of adequate  
17 consideration. Counsel Singh, on behalf of the agency, admitted the \$5,000.00 monetary  
18 settlement paid to the Plaintiff was nothing more than a nuisance value, bragging and  
19 clearly indicating that then Secretary Becerra, by Allen and Does, had deprived Plaintiff of  
20 adequate consideration thus taking advantage of Plaintiff and depriving him of informed  
21 consent by concealing material information. (CV-24-00417-TUC-RM, Doc. 17).  
22

23 153. The Plaintiff has complied with all Federal EEO processes under 29 C.F.R. Sec.  
24 1614.101, *et al.* Tender of consideration from the previous settlement agreement is not  
25 authorized or required. Plaintiff may litigate his initial claims and his new retaliation  
26  
27  
28

1 claims. Defendant Secretary may receive an offset of previously paid damages from the  
2 age discrimination settlement if and after higher damages are awarded. *Syverson v. IBM*  
3 *Corp.*, 472 F.3d 1072 (9<sup>th</sup> Cir. 2006); *Juhola v. Dept. of the Army*, EEOC Appeal No.  
4 01934032 (June 30, 1994). In other words, defendants cannot benefit from its violations of  
5 the OWBPA evidenced by its conduct concealing material evidence.  
6

7 154. Defendant Allen further continued to misrepresent the real reason for the  
8 investigation by taking acts and making omissions to conceal the false statements and real  
9 reason for the investigation by having action taken by Does to falsely inform Privacy Act  
10 officers by falsely stating his statements were correct, and by concealing the false notice  
11 of allegation which he signed and by concealing the real reason for the investigation, as  
12 alleged herein previously.  
13

14 155. That Allen and Does in their position and pursuant to federal regulations and court  
15 rules as pleaded above had an affirmative duty to disclose and to NOT conceal the false  
16 and misleading statements and the real reason for the investigation. Moreover, the  
17 defendants had a duty to plead matters in good faith under Rule 11, and instead deliberately  
18 misrepresented to Plaintiff his managerial decisions had nothing to do with the  
19 investigation, and then changed its position on December 10, 2024, with no explanation or  
20 justification.  
21

22 156. The false statements made by defendant Allen and the omissions were material, and  
23 at the time he made them he and defendants Does had knowledge that the statements and  
24 omissions were false. Defendants knowingly concealed the false statements and had a duty  
25 under federal regulations and Federal Court rules, and in their positions as OMHA Chief  
26  
27  
28

1 Judge, as ethics officer, licensed attorneys, employees assigned to and/or working with the  
 2 Program Integrity Division, and as federal employees, and because defendant Allen held a  
 3 confidential employment relationship with Plaintiff, to disclose the false statements, and  
 4 the real purported reason for the investigation. Defendants Allen and Does knew and had  
 5 foreseeable belief the false statements created an indicium that Plaintiff had committed  
 6 misconduct and that records maintained by defendants contained false, incomplete, and  
 7 inaccurate information, which would negatively import Plaintiff's employment and other  
 8 opportunities, professional reputation, legal and property rights, and standing in the legal  
 9 community.

10 157. That Plaintiff had a right to rely upon defendant Allen's notice of allegation as being  
 11 truthful since he is a licensed attorney, head of the OMHA, and had direct authority over  
 12 the Program Integrity Division and was ultimately responsible for making sure all  
 13 employment inquiries abide by HHS regulations and instructions and federal law and was  
 14 in Plaintiff's direct chain of command.

### 15 **JURY DEMAND**

16 158. Demand for jury trial is made for any, and all counts and issues, allowed to be tried  
 17 by a jury.

### 18 **RELIEF REQUESTED**

19 WHEREFORE, Plaintiff Cianci requests the following relief:

- 20 a. For liability findings against defendant Allen, and Does, in their individual  
 21 capacity, jointly and severally, or as allowed by law, that they committed acts  
 22 against Plaintiff which violated his constitutional rights under *Bivens*; and  
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1 retaliated against Plaintiff under the False Claims Act; and a finding and  
2 declaration that the previous settlement release was based upon deception,  
3 overreach, fraud, and/or misrepresentation, and/or that Plaintiff was deprived  
4 informed consent, and is therefore, null and void, and that post-employment  
5 acts of retaliation, occurring after August 1, 2023, are not covered by the  
6 settlement release, in any event.  
7

8  
9 b. For the Court to award all damages allowed by law against defendant Allen  
10 and Does, in their individual capacity, under *Bivens* and the False Claims Act  
11 for retaliation, including punitive damages. That all Does be held jointly and  
12 severally liable with defendant Allen, or as allowed by law.  
13

14 c. For all attorneys' fees and court costs allowed by law.

15 d. For equitable relief, against the defendant agency, Secretary Kennedy, and  
16 Allen in their official capacity ordering correction of the investigation  
17 records, and/or expungement, and formal recession of the investigation,  
18 pursuant to the ADEA and 29 C.F.R. Sec. 1614.501, and the Privacy Act,  
19 and an order enjoining the application of the release under the OWBPA.  
20

21 e. For damages and other relief allowed by law for maintaining inaccurate,  
22 unfair, and incomplete records under the Privacy Act, against the agency.  
23

24 f. For damages and other relief allowed by law against defendant Allen and  
25 Does, under the retaliation provisions in the False Claims Act, for double  
26 wages and earnings loss.  
27

28 g. For damages and other relief, including loss earnings, compensatory

1 damages, reinstatement of his previous position, and all other damages  
2 including back and front wages allowed by law, for violating the ADEA,  
3 against the Secretary in his official capacity.  
4

5 h. For all other relief allowed by law.

6 **SUBMITTED** and dated this 24th day of May 2025.

7 *By Michael Ciani*

8 Michael Ciani

9 #005538

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